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ABSTRACT

The textbook, written for first year law students and for paralegals, or legal assistants, attempts to break down the components of legal research and writing and to identify effective starting points for these activities. It was designed for use in a classroom setting or on-the-job as a dictionary/reference source. The first part, Legal Research, contains 19 chapters which deal with the following topics: legal research in perspective, principles of legal research, kinds of law books, citations, components of a law book, finding ambiguity in the law, reading constitutional law, reading statutory law, reading regulations, reading case law, legal authority, analogizing cases, using a table of contents and an index, annotations, how to start legal researching, finding applicable constitutional law, finding applicable statutory law, finding applicable regulatory law, and finding applicable case law. The five chapters in part two, Legal Writing, cover: introduction to writing, kinds of legal writing, organization, memorandum format, and ambiguity in the hands of an effective advocate. Appended are a bibliography containing 14 items on legal research and 12 items related to writing and a subject index. (Author/MS)

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Legal Research, Writing and Analysis for Law Students and Paralegals: Some Starting Points

by

William P. Statsky
Professor of Law
Antioch School of Law

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PREFACE

This text is written for first year law students and for paralegals. It is not an exhaustive treatment of every aspect of research and writing; it is an attempt to break down the components of both and to identify effective starting points. The text is divided into two parts. Part I covers legal research and Part II covers legal writing (with emphasis on writing a legal memorandum). Hopefully, the design of these parts will permit the student to make use of the text either in a classroom setting, or on-the-job as a dictionary/reference resource.* *For the use of several diagrams and descriptive material, the permission of the following companies is gratefully acknowledged: West Publishing Company, Shepard's Citations, Inc., The Lawyer's Co-operative Publishing Company and Bancroft-Whitney Company.*

For her patience and thoroughness in typing this manuscript, my sincere thanks go to Linda J. Saunders.

William P. Statsky

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*A paralegal is a person skilled in providing legal services. He or she is not a lawyer, nor studying to be a lawyer. His authorization to participate in the delivery of legal services comes from the authority granted by administrative agencies and from the authority generated through the supervision of his work by a lawyer. (Note that the former authority is not dependent upon the latter).

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PART I
LEGAL RESEARCH

The pain and the excitement of legal research is that the problem we are given will usually be smaller than the problem we find.

CHAPTER ONE

INTRODUCTION: LEGAL RESEARCH IN PERSPECTIVE

WHEN SOMEONE WALKS INTO A LAW LIBRARY, HIS* FIRST IMPRESSION IS LIKELY TO BE THAT OF AWE. HE IS CONFRONTED WITH ROW UPON ROW OF BOOKS, MOST OF WHICH SEEM UNAPPROACHABLE; THEY DO NOT INVITE BROWSING. TO BE ABLE TO USE THE LAW LIBRARY, THE FIRST RESPONSIBILITY OF THE LEGAL RESEARCHER IS TO BREAK DOWN ANY PSYCHOLOGICAL BARRIER THAT HE MAY HAVE WITH RESPECT TO THE BOOKS IN IT. THIS IS DONE NOT ONLY BY LEARNING THE TECHNIQUES OF LEGAL RESEARCH, BUT ALSO BY UNDERSTANDING THE LIMITATIONS OF THE LAW LIBRARY: WHAT IS THE LIBRARY CAPABLE OF DOING FOR YOU AND WHAT SHOULD YOU NOT ASK IT TO DO?

A MAJOR MISUNDERSTANDING ABOUT THE LAW LIBRARY IS THAT IT CONTAINS THE ANSWER TO EVERY LEGAL PROBLEM THAT CONFRONTS RESEARCHERS. AS WE SHALL SEE, IN MANY INSTANCES, THERE ARE NO DEFINITIVE ANSWERS TO LEGAL PROBLEMS. VERY OFTEN THE RESEARCHER OPERATES ON THE BASIS OF "EDUCATED GUESSES" OF WHAT THE ANSWER IS. TO BE SURE, HIS CONCLUSIONS ARE OFTEN SUPPORTED FROM WHAT HE UNCOVERS THROUGH LEGAL RESEARCH IN THE LAW LIBRARY. THE FACT IS, HOWEVER, THAT THE END PRODUCT IS OFTEN THE RESEARCHER'S OPINION OF WHAT THE LAW IS, RATHER THAN THE ABSOLUTE ANSWER. THIS IS SO BECAUSE NO ONE WILL KNOW FOR SURE WHAT THE "RIGHT" OR FINAL ANSWER IS UNTIL THE MATTER IS LITIGATED IN COURT. IF THE PROBLEM IS NEVER LITIGATED, THEN THE "RIGHT" ANSWER WILL BE WHATEVER THE PARTIES ACCEPT AMONG THEMSELVES, PERHAPS THROUGH NEGOTIATION OR SETTLEMENT. THE RESEARCHER WILL NOT KNOW WHAT ANSWER CARRIES THE DAY FOR THE CLIENT IN NEGOTIATION UNTIL THE NEGOTIATION PROCESS BEGINS.** IT IS TRUE, HOWEVER, THAT THERE ARE MANY SIMPLE PROBLEMS THAT CAN BE ANSWERED BY VERY BASIC (EASY) LEGAL RESEARCH. IF SOMEONE WANTS TO KNOW, FOR EXAMPLE, THE NAME OF THE GOVERNMENT AGENCY IN CHARGE OF INCORPORATING A BUSINESS OR THE MAXIMUM NUMBER OF WEEKS ONE CAN RECEIVE UNEMPLOYMENT COMPENSATION, FINDING THE ANSWER IS NOT DIFFICULT IF THE RESEARCHER KNOWS WHAT BOOKS (OR OTHER SOURCES) TO GO TO AND HOW TO USE THE INDEX TO THE BOOKS. MOST LEGAL RESEARCH PROBLEMS, HOWEVER, ARE NOT THAT SIMPLE.

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*Throughout this text, references to "he," "him" and "his" are intended to cover legal researchers of both sexes.

**For a more complete description of the litigation and negotiation process, see Statsky, W., Introduction to Civil and Criminal Litigation: Roles for the Paralegal (1974).

THE LAW LIBRARY DOES NOT HAVE TO BE APPROACHED IN A VACUUM AS IF THE RESEARCHER'S PROBLEM HAS NEVER BEEN RESEARCHED BEFORE. THERE ARE WAYS TO BYPASS THE LIBRARY, OR AT LEAST TO AVOID RELYING ON IT EXCLUSIVELY. A CARDINAL RULE OF RESEARCHERS IS TO TAKE ADVANTAGE OF THE LEGAL RESEARCH CONDUCTED BY OTHERS ON THE SAME OR SIMILAR POINTS. LAWYERS, FOR EXAMPLE, FREQUENTLY CALL ON OTHER LAWYERS MORE EXPERT OR EXPERIENCED IN PARTICULAR AREAS OF THE LAW IN ORDER TO OBTAIN EITHER THE ANSWER TO THE PROBLEM OR LEADS ON HOW TO FIND THE ANSWER. IN ADDITION, THERE ARE CERTAIN KINDS OF TEXTS IN THE LIBRARY WHICH EXHAUSTIVELY RESEARCH TOPICS. IF THE TOPIC RESEARCHED IS SIMILAR TO THE PROBLEM YOU ARE DEALING WITH, A SIGNIFICANT AMOUNT OF THE RESEARCH IS ALREADY DONE FOR YOU IF YOU KNOW HOW TO ADAPT THE RESEARCH FROM THESE TEXTS. AT THE VERY LEAST, THE TEXTS WILL PROVIDE YOU WITH VALUABLE LEADS OR STARTING POINTS. AS TIME SAVING AS THIS TECHNIQUE MAY BE, HOWEVER, A WORD OF EXTREME CAUTION IS IN ORDER FOR THE STUDENT NEW TO RESEARCH: SHORT-CUTS PRESUPPOSE THE ABILITY OF THE RESEARCHER TO BE ABLE TO FIND THE ANSWER HIMSELF. HE MUST BE ABLE TO USE THE LAW LIBRARY IN ORDER TO BE ABLE TO USE THE LEADS PROVIDED BY OTHERS INTELLIGENTLY. THIS IS OF COURSE ALL THE MORE TRUE IF THERE HAPPENS TO BE NO ONE AVAILABLE TO THE RESEARCHER TO PROVIDE ANSWERS OR LEADS. A RESEARCHER SERIOUSLY SHORT-CHANGES HIMSELF IF HE FAILS TO SHARPEN HIS OWN RESEARCH SKILLS BECAUSE OF AN UNDUE RELIANCE ON "GIFT" RESEARCH PROVIDED THROUGH OTHERS.

ANOTHER DANGER OF OVER-RELIANCE IS TO VIEW THE LIBRARY AS THE SOLE OR THE PRIMARY VEHICLE OF ASSISTING A LAW OFFICE RESOLVE PROBLEMS OF CLIENTS. PROBLEM RESOLUTION IS MORE OFTEN THE PRODUCT OF HUSTLE, GOOD JUDGMENT, COMMON SENSE, AND IMAGINATION THAN OF LIBRARY RESEARCH. THIS IS NOT TO SAY THAT ONE SHOULD NOT STUDY THE TECHNIQUES OF LIBRARY RESEARCH; IT IS RATHER TO ARGUE THAT SUCH RESEARCH MUST BE PUT IN PERSPECTIVE. LIBRARY RESEARCH IS ONLY ONE TOOL AT YOUR DISPOSAL. VERY OFTEN YOU WILL BE AN INTERVIEWER, AN INVESTIGATOR, A DRAFTER, A NEGOTIATOR AND AN ADVOCATE. THESE FUNCTIONS CAN BE SUPPORTED BY LIBRARY RESEARCH, BUT IN A GREAT MANY INSTANCES THEY ARE NOT DEPENDENT UPON IT. A STUDENT IS SIMPLY WRONG WHEN HE CLAIMS THAT HE CANNOT PERFORM ANY OF THESE FUNCTIONS UNLESS HE IS AN EXPERT LIBRARY RESEARCHER. A CENTRAL INGREDIENT OF PROBLEM RESOLUTION IS AN ABILITY TO DEAL WITH PEOPLE. DOING THIS WELL IS A DIFFICULT UNDERTAKING, REQUIRING THE INDIVIDUAL TO DRAW UPON A WIDE RANGE OF TALENTS, THE MOST CRITICAL OF WHICH ARE PERSERVERENCE AND IMAGINATION. IF AN INDIVIDUAL HAS A LOW FRUSTRATION TOLERANCE OR IS UNWILLING TO ATTEMPT IMAGINATIVE APPROACHES TO PROBLEMS, HE MAY BE TEMPTED TO EXCUSE OR COVER UP THESE DEFICIENCIES BY CLAIMING THAT HE HAS NOT BEEN TRAINED TO DO LIBRARY RESEARCH. SUCH THINKING IS SUPREMELY SELF-DECEPTIVE AND THE AWAKENING WILL COME WHEN HE REALIZES THAT PERSEVERENCE AND IMAGINATION ARE ALSO REQUIRED FOR EFFECTIVE LIBRARY RESEARCH AND FOR EFFECTIVE APPLICATION OF THE WORK-PRODUCT DERIVED FROM LIBRARY RESEARCH.

PERHAPS THE MOST HEALTHY WAY TO APPROACH THE LAW LIBRARY IS TO

VIEW IT NOT AS A REPOSITORY OF ANSWERS, BUT AS A STOREHOUSE OF AMBIGUITIES THAT ARE WAITING TO BE CLARIFIED, MANIPULATED AND APPLIED TO THE FACTS OF A CLIENT'S CASE. YOU MAY HAVE HEARD THE STORY OF A CLIENT WHO WALKED INTO A LAW OFFICE AND ASKED TO SEE A ONE-ARMED LAWYER. WHEN ASKED WHY HE REQUIRED AN ATTORNEY MEETING SUCH SPECIFICATIONS, HE REPLIED THAT HE WAS TIRED OF PRESENTING PROBLEMS TO LAWYERS AND HAVING THEM CONSTANTLY TELL HIM THAT "ON THE ONE HAND" HE SHOULD DO THIS, BUT "ON THE OTHER HAND" HE SHOULD DO THAT; HE HUNGERED FOR A LAWYER WHO WOULD GIVE HIM AN ANSWER. THIS CLIENT'S CONCERN IS WELL TAKEN. HE IS ENTITLED TO AN ANSWER, TO DEFINITIVE GUIDANCE. AT THE SAME TIME, OR, IF YOU WILL, ON THE OTHER HAND, IT IS PART OF THE LAWYER'S JOB TO BE WEIGHING ALTERNATIVES CONSTANTLY, TO BE ALWAYS THINKING OF OPTIONS AND COUNTER-OPTIONS, OF BENEFITS AND LIABILITIES OF ANY ONE PARTICULAR COURSE OF ACTION. THE GOOD LAWYER IS SO INCLINED BECAUSE HE UNDERSTANDS THAT OUR LEGAL SYSTEM IS INFESTED WITH UNKNOWNS AND AMBIGUITIES. THE GOOD LEGAL RESEARCHER ALSO HAS THIS UNDERSTANDING. HE IS NOT FRIGHTENED BY AMBIGUITIES; HE THRIVES ON THEM.

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*See page 41, Chapter Six infra on Finding Ambiguity in the Law.

Chapter Two

Principles of Legal Research

There are a number of basic principles which should guide the researcher in his task of mastering the law library. A grasp of these principles is often a precondition to effective legal research.

1. There is no magic to legal research.

Legal research is a product of practice. While some guidelines and shortcuts are available, it takes an intelligent researcher to tackle the task. Few, if any, absolutes apply. You don't have to have a law degree to do legal research.

2. Researchers develop their own style and system of legal research.

No two researchers undertake their research responsibilities exactly alike. Each has learned and developed his own peculiarities which add up to a system of research with which he is comfortable.

3. Legalese can be broken down into understandable language.

The researcher often comes across Latin phrases and seemingly endless sentence structures. They can be frightening unless the researcher is willing to translate what he is reading, item by item, into language that he can understand.

4. There are common patterns in the language of the law.

Cases, constitutions, statutes and regulations have a certain style to their organization. They are often written in similar patterns. While an understanding of these patterns will not eliminate all difficulties involved in legal research, it can be a helpful starting point.

5. Individual clauses, sections or passages in law books are closely interrelated.

Once the researcher has found something in a text that is on point (i.e., directly relevant to his problem), he must pursue the extent to which the point has been modified, explained or otherwise commented upon in other law texts, or indeed, elsewhere within the same text. A particular agency regulation, for example, is almost always based upon a particular statute written by the legislature. A complete understanding of the regulation will often

REQUIRE STUDY OF THIS STATUTE. THE REGULATION OR STATUTE MAY HAVE BEEN THE SUBJECT OF LITIGATION IN WHICH EVENT THE CASE OR CASES INVOLVED MUST BE ANALYZED. NOTE THAT WHEN A RESEARCHER IS READING THE REGULATION, HE MAY BE GIVEN NO CLUES THAT IT HAS BEEN MODIFIED OR INDEED ELIMINATED BY OTHER LEGAL DOCUMENTS. HE CAN FIND THIS OUT ONLY BY APPLYING THE PRINCIPLE OF INTERRELATIONSHIP, I.E., BY TRACING THE SECTION OR PASSAGE OR CASE THROUGH OTHER SECTIONS, PASSAGES AND CASES.

6. OUR LEGAL SYSTEM OPERATES ON THE PRINCIPLES OF PRECEDENT AND ANALOGY.

WHENEVER A LEGAL PROBLEM COMES UP, THE RESEARCHER ASKS: HAS THIS SAME PROBLEM EVER BEEN RAISED BEFORE? IF SO, THEN SOME COURT HAS PROBABLY DELIVERED A LEGAL OPINION ON THE PROBLEM AND THIS OPINION MAY BE PRECEDENT FOR YOUR OWN PROBLEM, I.E., THE RESULT REACHED BY THE COURT MIGHT BE APPLIED IN YOUR CASE. IN MOST SITUATIONS, HOWEVER, THE EXACT PROBLEM HAS NEVER COME UP BEFORE BECAUSE OF THE GREAT DIVERSITY OF FACTS AND CIRCUMSTANCES POSSIBLE IN HUMAN RELATIONS. NEVERTHELESS, A COURT MAY HAVE DECIDED A SIMILAR I.E., ANALOGOUS, PROBLEM IN THE PAST, IN WHICH EVENT, THE RESULT OF THE CASE MAY BE PRECEDENT OR PARTIALLY PRECEDENT FOR YOUR PROBLEM. (SEE ALSO INFRA CHAPTER TWELVE ON ANALOGY.)

7. LANGUAGE IS INHERENTLY AMBIGUOUS AND SUBJECT TO INTERPRETATION.

THE BASIC WORKING MATERIALS OF THE RESEARCHER ARE WORDS. IT IS A STANDARD RULE OF THUMB OF THE RESEARCHER THAT THE MEANING OF WORDS IS ALMOST NEVER CLEAR ON THE SURFACE. WORDS MUST BE INTERPRETED. THE RESEARCHER MUST FIRST ASK HIMSELF: WHAT, AS A MATTER OF LOGIC AND COMMON SENSE, DO THE WORDS MEAN TO ME? AND THEN: WHAT WAS THE PROBABLE MEANING OR INTENTION OF THE AUTHOR OF THE WORDS WHEN HE WROTE THEM? THE GOOD RESEARCHER KNOWS THAT VERY OFTEN THE ANSWER TO THESE QUESTIONS CAN BE DIFFERENT. (SEE ALSO INFRA CHAPTER SIX ON AMBIGUITY.)

8. WORD INTERPRETATION IS ADVOCACY.

SINCE WORDS MUST BE INTERPRETED BECAUSE THEY ARE OFTEN (OR ALWAYS) AMBIGUOUS, THE RESEARCHER NATURALLY AND APPROPRIATELY CHOOSES THE INTERPRETATION THAT IS MOST FAVORABLE TO HIS CLIENT. HE MUST BE REASONABLE, HOWEVER, AND UNDERSTAND THAT HIS INTERPRETATION MAY NOT PREVAIL. IT IS HIS JOB TO TRY TO PERSUADE PEOPLE OF THE INTERPRETATION MOST FAVORABLE TO THE OBJECTIVE OF THE CLIENT. IN SHORT, THE INTERPRETER OF WORDS IS AN ADVOCATE.

9. FLEXIBILITY IS PARAMOUNT.

THE RESEARCHER HAS REACHED AN ENVIABLE PLATEAU WHEN HE UNDERSTANDS THE FOLLOWING PARADOX: A RESEARCHER OFTEN DOESN'T KNOW WHAT HE IS LOOKING FOR UNTIL HE FINDS IT. SINCE THE SIMPLE ANSWERS ARE

FEW AND FAR BETWEEN, THE RESEARCHER IS CONSTANTLY CONFRONTED WITH FRUSTRATION AND AMBIGUITY. AS HE PURSUES AVENUES AND LEADS, HE INVARIABLY COMES UPON NEW AVENUES AND THOUGHTS THAT NEVER OCCURRED TO HIM INITIALLY. AN ENTIRELY NEW APPROACH TO THE PROBLEM MAY BE UNCOVERED WHICH RADICALLY CHANGES HIS INITIAL PERCEPTIONS. HE REACHED THIS STAGE NOT BECAUSE HE CONSCIOUSLY SOUGHT IT OUT, BUT RATHER BECAUSE HE WAS FLEXIBLE AND OPEN-MINDED ENOUGH TO BE RECEPTIVE TO NEW APPROACHES AND PERCEPTIONS. THIS PHENOMENON IS BY NO MEANS PECULIAR TO LEGAL RESEARCH. TAKE THE SITUATION OF THE MAN IN NEED OF TRANSPORTATION. HE SETS HIMSELF TO THE TASK OF DETERMINING THE MOST ECONOMICAL WAY TO BUY A GOOD CAR. IN HIS SEARCH, HE STUMBLES UPON THE PRACTICE OF LEASING CARS. AFTER STUDYING THIS OPTION, HE CONCLUDES THAT IT WOULD BE THE MOST SENSIBLE RESOLUTION OF HIS PROBLEM OF OBTAINING TRANSPORTATION. HE DIDN'T KNOW WHAT HE WAS LOOKING FOR, A CAR LEASING DEAL, UNTIL HE FOUND IT. COMPARE THIS TO A CLIENT WHO COMES INTO A LAW OFFICE FOR ADVICE ON HOW TO COMPOSE HIS WILL SO THAT CERTAIN MONIES WOULD PASS TO DESIGNATED INDIVIDUALS UPON HIS DEATH. THE LAWYER ASKS YOU TO DO SOME LEGAL RESEARCH IN THE AREA OF WILLS. WHILE IN THE LAW LIBRARY STUDYING THE LAW OF WILLS, YOU SEE REFERENCE TO LIFE INSURANCE POLICIES AS A SUBSTITUTE FOR WILLS IN PASSING CASH ONTO BENEFICIARIES AT DEATH. YOU BRING THIS TO THE ATTENTION OF THE ATTORNEY WHO DECIDES THAT IT IS INDEED AN OPTION WORTH PURSUING. YOU DID NOT KNOW WHAT YOU WERE LOOKING FOR, A WILL SUBSTITUTE, UNTIL YOU FOUND IT.

10. LEGAL RESEARCHERS ARE NOT JUDGES.

LEGAL RESEARCHERS OFTEN CONFUSE THEIR ROLE. THEY TEND TO PLAY THE ROLE OF JUDGE IN TRYING TO ANTICIPATE WHAT THE AUTHORITATIVE DECISION OF A COURT WOULD BE IF THE COURT HAD THE PROBLEM BEING RESEARCHED BEFORE IT. THIS IS ALWAYS DANGEROUS. THE RESEARCHER MUST COME UP WITH OPTIONS AND POSSIBILITIES. THIS MEANS THE IDENTIFICATION OF AMBIGUITIES THAT CAN BE "PLAYED WITH." THIS IS NOT TO ARGUE THAT RESEARCHERS SHOULD NOT BE CONCERNED WITH WHAT THEY THINK THE COURT WILL DECIDE IF THE COURT HAD THE PROBLEM. THIS IS A VALID CONCERN SINCE RESEARCHERS MUST NOT BE UNREASONABLE IN PURSUING POSSIBLE INTERPRETATIONS. THE POINT IS THAT IF A RESEARCHER IS SO PREOCCUPIED WITH WHAT A COURT MIGHT SAY, HE VERY LIKELY WILL NOT HAVE THE REQUISITE OPEN FRAME OF MIND NEEDED TO COME UP WITH OPTIONS THROUGH DIGGING.

IN ATTEMPTING TO APPLY THESE PRINCIPLES OF LEGAL RESEARCH, OUR APPROACH WILL BE TO ADDRESS THE FOLLOWING QUESTIONS:

1) HOW MANY KINDS OF LAW BOOKS EXIST?
2) WHAT ARE CITATIONS?
3) WHAT ARE THE COMPONENTS OF A LAW BOOK?
4) HOW DOES THE RESEARCHER "FIND" AMBIGUITY?
5) WHAT IS CONSTITUTIONAL LAW AND HOW IS IT READ?
6) WHAT IS A STATUTE AND HOW IS IT READ?
7) WHAT IS A REGULATION AND HOW IS IT READ?

8) WHAT IS A COURT OPINION AND HOW IS IT BRIEFED?
9) WHAT IS LEGAL AUTHORITY?
10) WHAT IS THE PRINCIPLE OF ANALOGY AND HOW IS IT APPLIED?
11) HOW IS THE TABLE OF CONTENTS AND AN INDEX USED?
12) WHAT IS AN ANNOTATION?
13) HOW DOES THE RESEARCHER START HIS RESEARCH?
14) HOW IS APPLICABLE CONSTITUTIONAL LAW FOUND?
15) HOW IS APPLICABLE STATUTORY LAW FOUND?
16) HOW IS APPLICABLE REGULATORY LAW FOUND?
17) HOW IS APPLICABLE CASE LAW FOUND?

FINALLY, A SERIES OF LEGAL RESEARCH PROBLEMS WILL BE PRESENTED IN CHAPTER TWENTY.

Chapter Three

Kinds of Law Books

By law book, we mean any book, booklet, pamphlet or document that is often found in a law library and used for legal research. Law books could be categorized in a number of ways. First, we could distinguish books on the basis of whether they are "official" or "unofficial" (see "A" below). Second, we could ask whether the books contain the law itself or commentary about the law ("B"). Third, we could ask what kind of law the book is primarily about ("C"). Finally, we can look to the shape of the book as a way of learning something about it. ("D")

A. Official/Unofficial

An "official" text is one authorized by the author of the text. Judges, legislators and administrators write (or author) opinions, statutes and regulations respectively. Normally they are printed in an official edition which means that the accuracy of the text is assured by the author. Private publishing companies frequently take official editions and re-print them in a number of formats so that lawyers can use them and cross-relate them more effectively. The work-product of these companies is usually labeled "unofficial." For example, most court opinions are printed in official and unofficial editions.

B. Law vs. Commentary on the Law

The word "law" means constitutions, statutes, regulations and court opinions. A second categorization of law books could be as follows:

A. Books containing only the law.
B. Books containing only commentary on the law.
C. Books containing a combination of law and commentary.

For example when a court opinion is written, it may be found in the official reporter of the court. This reporter essentially contains nothing but court cases ("A"). A law review article may be written by a law student or lawyer commenting on this case or on any other area of the law. The article is published in periodicals called law reviews. Normally, law reviews contain only commentary on the law and therefore would fall into category "B."

FINALLY, THE CASE MAY BE PRINTED IN A SERIES OF VOLUMES CALLED AMERICAN LAW REPORTS (ALR). THIS SERIES WILL CONTAIN A COMBINATION OF THE LAW (THE OPINION ITSELF) PLUS EXTENSIVE COMMENTARY ON THE OPINION (CATEGORY "C" ABOVE).

C. NATURE OF THE LAW

A THIRD WAY THAT BOOKS CAN BE CATEGORIZED IS BY THE NATURE OF THE LAW THAT THEY CONTAIN OR ABOUT WHICH THEY PROVIDE COMMENTARY. BY THIS APPROACH THERE ARE FIVE KINDS OF BOOKS:

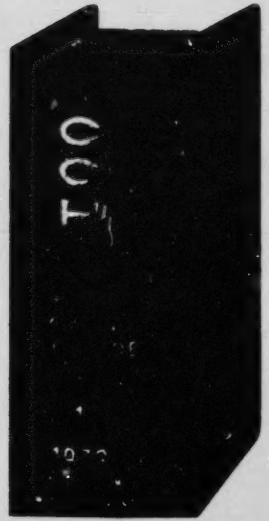
A. ON CONSTITUTIONAL LAW.
B. ON STATUTORY LAW.
C. ON CASE LAW.
D. ON ADMINISTRATIVE REGULATIONS.
E. ON A COMBINATION OF THE ABOVE.

D. STRUCTURE OF THE BOOK

A FINAL WAY TO BEGIN TO GET A HANDLE ON THE DIFFERENT KINDS OF LAW BOOKS AVAILABLE IS BY LOOKING AT THE STRUCTURE OF THE BOOK ITSELF:

A. LOOSE-LEAF
B. PAMPHLETS
C. BOUND BOOKS

A LOOSE-LEAF TEXT IS A THREE-RING BINDER CONTAINING PAGES THAT CAN EASILY BE PUT IN OR TAKEN OUT. AS NEW MATERIAL IS WRITTEN COVERING THE SUBJECT-MATTER OF THE LOOSE-LEAF TEXT, IT IS PLACED IN THE BINDER, OFTEN REPLACING THE PAGES WHICH THE NEW MATERIAL HAS CHANGED OR OTHERWISE SUPPLEMENTED. HERE IS AN EXAMPLE OF A LOOSE-LEAF TEXT PUBLISHED BY COMMERCE CLEARINGHOUSE (CCH) ON TAX LAW:



MOST OF THE PAMPHLETS IN THE LIBRARY CONTAIN MATERIAL THAT WILL SUBSEQUENTLY BE PUBLISHED IN BOUND VOLUMES. FOR EXAMPLE, ADVANCE SHEETS ARE PAMPHLETS OF RECENTLY WRITTEN COURT OPINIONS. AFTER A NUMBER OF THEM HAVE BEEN ISSUED, THEY WILL BE COLLECTED INTO BOUND VOLUMES. LOOSE-LEAF TEXTS AND PAMPHLETS ARE DESIGNED TO PROVIDE LAW OFFICES WITH CURRENT MATERIAL AT RELATIVELY LOW COST.

THE FOLLOWING IS AN ALPHABETICAL LIST OF TERMS, LABELS AND TITLES OF LAW BOOKS, MOST OF WHICH WILL FALL WITHIN ANY OF THE FOUR BASIC CATEGORIES OF TEXTS OUTLINED ABOVE.

1. ACTS

WHEN THE LEGISLATURE PASSES A LAW, IT IS CALLED A STATUTE OR AN ACT. (SEE CODE, SLIP LAW AND STATUTE BELOW.) HERE IS AN EXAMPLE OF A STATUTE. IT COMES FROM THE CALIFORNIA PENAL CODE. (ON READING STATUTES, SEE CHAPTER EIGHT INFRA).

§ 67. Bribes; giving or offering to executive officers; punishment

Every person who gives or offers any bribe to any executive officer in this State, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in the state prison not less than one nor more than 14 years, and is disqualified from holding any office in this State. (As amended Stats. 1957, c. 50, p. 612, § 1.)

2. ADMINISTRATIVE DECISION

WHEN AN ADMINISTRATIVE AGENCY CONDUCTS A HEARING, IT SOMETIMES PUBLISHES THE DECISION OR OPINION OF THE HEARING OFFICER. SUCH DECISIONS ARE OFTEN RELEASED IN MIMEOGRAPH FORM AND ARE SOMETIMES FOUND IN LOOSE-LEAF BINDERS. (SEE ALSO REGULATION BELOW.) (OFTEN THESE DECISIONS ARE NOT OBTAINABLE UNLESS THE RESEARCHER GOES TO THE AGENCY AND REQUESTS INDIVIDUAL COPIES.)

3. ADVANCE SHEET

AN ADVANCE SHEET IS A BOOKLET OR PAMPHLET CONTAINING OFFICIAL OR UNOFFICIAL REPORTS OF COURT OPINIONS. THESE PAMPHLETS ARE LATER PUT INTO BOUND VOLUMES. (SEE CASE AND REPORTER - CASES BELOW). THE FOLLOWING PICTURE IS OF PART OF THE FRONT COVER OF AN ADVANCE SHEET CONTAINING UNOFFICIAL REPORTS OF OPINIONS OF THE U.S. SUPREME COURT:

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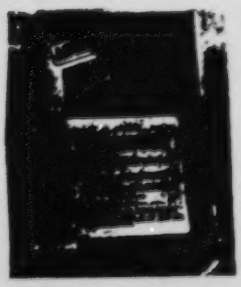


← THE COMPLETE FRONT COVER OF ANOTHER ADVANCE SHEET

4. ANNOTATION

AN ANNOTATION IS A SYSTEMATIC COMMENTARY ON THE LAW. CASES, STATUTES AND REGULATIONS ARE OFTEN ANNOTATED (ABBREVIATED "ANN.") THE ANNOTATION CAN PROVIDE HISTORICAL DATA, CROSS-REFERENCES, CASE EXERPTS ETC. FOR EXAMPLE, WISCONSIN STATUTES ANNOTATED IS A SERIES OF VOLUMES COVERING LAWS WRITTEN BY THE LEGISLATURE WITH COMMENTARY (ANNOTATIONS) COVERING EACH LAW.

5. BILL

A BILL IS A PROPOSED STATUTE, I.E., ONE THAT HAS NOT YET BEEN ENACTED INTO LAW. BILLS ARE PRINTED IN SMALL BOOKLET OR PAMPHLET FORM. FEDERAL BILLS ARE ALSO PRINTED IN THE CONGRESSIONAL RECORD, A COMPREHENSIVE TREATMENT OF WHAT HAPPENS IN CONGRESS. BILLS PROPOSED IN STATE LEGISLATURES ARE FOUND IN A VARIETY OF FORMS, E.G., PAMPHLETS, LOOSE-LEAF BINDERS, DAILY LAW JOURNALS, ETC.

6. BLUE BOOK

A BLUE BOOK IS A VOLUME OF CASE CITATIONS. A CASE CITATION IS THE NAME OF A CASE, VOLUME NUMBER, NAME OF BOOK, PAGE NUMBER, NAME OF COURT AND THE DATE OF THE OPINION. (SEE CHAPTER FOUR ON CITATIONS INFRA). AS INDICATED, MOST OPINIONS HAVE OFFICIAL AND UNOFFICIAL EDITIONS. EACH EDITION HAS ITS OWN VOLUME AND PAGE NUMBER SINCE DIFFERENT BOOKS ARE INVOLVED. THE BLUE BOOK IS A TRANSFER TABLE ALLOWING THE RESEARCHER TO FIND OUT WHAT THE UNOFFICIAL CITATION IS TO EVERY OPINION REPORTED IN THE OFFICIAL EDITION.

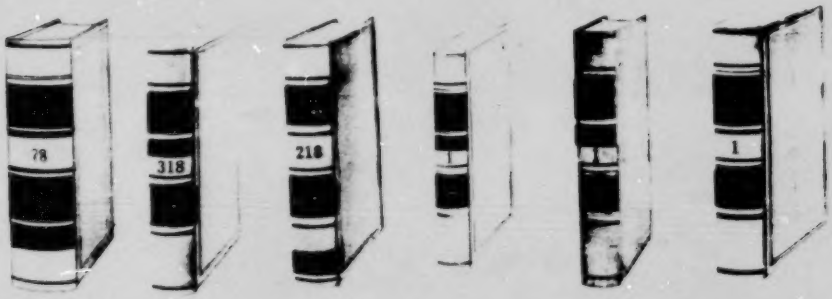
7. BULLETIN

THE WORD BULLETIN IS USED TO DESCRIBE A NUMBER OF DIFFERENT LAW BOOKS, LAW REVIEWS OR LAW JOURNALS, FOR EXAMPLE, (SEE BELOW) SOMETIMES USE THIS WORD AS PART OF THEIR TITLE. SOME ADMINISTRATIVE AGENCIES PUBLISH DOCUMENTS PERTAINING TO THE WORK OF THEIR AGENCIES IN WHAT ARE CALLED BULLETINS.

8. CASE

A CASE IS A MATTER THAT HAS BEEN OR THAT IS CURRENTLY IN LIGITATION BEFORE THE COURTS. THE WORD CASE IS USUALLY USED SYNONYMOUSLY WITH THE WORD OPINION ALTHOUGH THE LATTER TERM MORE PRECISELY IS THE RESULT OF A CASE IN LIGITATION. A CASE IS REPORTED WHEN IT IS PUBLISHED. MOST OF THE VOLUMES IN THE LARGE LAW LIBRARY ARE REPORTERS, BOTH OFFICIAL AND UNOFFICIAL. FOR THE FEDERAL SYSTEM THERE ARE REPORTED CASES

FROM THE U.S. SUPREME COURT, THE U.S. CIRCUIT COURTS AND THE U.S. DISTRICT COURTS. IN THE VARIOUS STATES THERE IS AT LEAST ONE FULL SET OF REPORTERS FOR EACH STATE (THE HIGHEST COURT IN THE STATE). HERE ARE SOME EXAMPLES OF UNOFFICIAL REPORTERS:



9. CASEBOOK

A CASEBOOK IS A LAW SCHOOL TEXTBOOK WHICH IS BASICALLY A COLLECTION OF COURT OPINIONS RELATING TO A PARTICULAR AREA OF THE LAW, E.G., LOCKHART, KAMISAR AND CHOPER, CASES AND MATERIALS ON CONSTITUTIONAL RIGHTS AND LIBERTIES (1964). CASEBOOKS ARE PRIMARILY A COLLECTION OF APPELLATE OPINIONS. FOR THE RESEARCHER, THEIR PRIMARY VALUE IS USALLY THE INTRODUCTIONS WRITTEN BY THE AUTHORS TO EACH TOPIC IN THE TEXT.

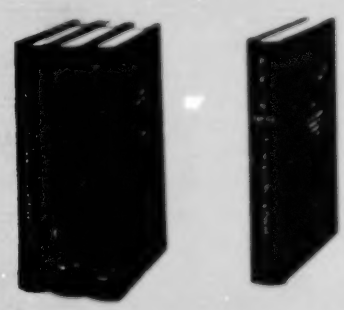
10. CITATOR

A CITATOR IS A TEXT GIVING THE RESEARCHER THE HISTORY OF CASES, STATUTES AND OTHER MATERIAL SUBSEQUENT TO THEIR EFFECTIVE DATE, E.G., HAS THE CASE BEEN OVERRULED, MODIFIED OR OTHERWISE COMMENTED UPON IN OTHER TEXTS? THE PRIMARY CITATOR IS SHEPARD'S CITATIONS WHICH COMES OUT REGULARLY IN SMALL AND LARGE PAMPHLETS WHICH ARE LATER CONSOLIDATED INTO BOUND VOLUMES.

11. CODE

A CODE IS A SYSTEMATIC COMPILATION OF STATUTES OR REGULATIONS PREPARED BY PRIVATE PUBLISHING COMPANIES. AS LEGISLATURES (STATE AND FEDERAL) WRITE STATUTES AND AS AGENCIES WRITE REGULATIONS, THEY ARE USUALLY PUBLISHED

CHRONOLOGICALLY WITHOUT ANY ORDER. FOR ANYONE TO STUDY THEM COHERENTLY, THEY MUST BE CODIFIED, E.G., STATUTES AND REGULATIONS (WITH THEIR AMENDMENTS) COVERING THE SAME SUBJECT ARE PRINTED IN THE SAME SECTION OF THE BOOK. FOR EXAMPLE, REGULATIONS ISSUED BY FEDERAL AGENCIES ARE FIRST PUBLISHED IN THE FEDERAL REGISTER AND THEN CODIFIED IN THE CODE OF FEDERAL REGULATIONS. THE FOLLOWING ARE EXAMPLES OF STATUTORY CODES. THE FIRST IS A PICTURE OF THREE VOLUMES OF THE UNITED STATES CODE ANNOTATED (U.S.C.A.) WHICH CONTAINS THE STATUTES OF THE FEDERAL LEGISLATURE, CONGRESS. NEXT THERE IS A PICTURE OF VOLUME 12 OF THE PENNSYLVANIA CODE:



12. CONSTITUTIONAL LAW AND CHARTERS

CONSTITUTIONAL LAW IS THE FUNDAMENTAL LAW OF THE LAND. THE UNITED STATES CONSTITUTION GOVERNS THE ENTIRE UNITED STATES, AND THE FIFTY STATE CONSTITUTIONS GOVERN EACH STATE. SOME OF THESE CONSTITUTIONS ARE PUBLISHED IN SEPARATE BOOKS. MOST OF THEM ARE PUBLISHED IN THE FIRST TWO OR THREE VOLUMES OF THE CODIFIED STATUTES IN THE JURISDICTION. FOR THE FEDERAL GOVERNMENT, THE UNITED STATES CONSTITUTION IS AT THE BEGINNING OF THE SET OF VOLUMES CALLED UNITED STATES CODE ANNOTATED. FOR THE STATES, THE STATE CONSTITUTION IS USUALLY AT THE BEGINNING OF THEIR INDIVIDUAL STATUTORY CODES. CHARTERS ARE THE FUNDAMENTAL LAW OF CITIES AND LOCAL GOVERNMENTS. THEY ARE USUALLY PUBLISHED IN SEPARATE BOOKS. (FOR MORE ON CONSTITUTIONAL LAW, SEE CHAPTERS SEVEN AND SIXTEEN INFRA.)

13. DECISIONS

DECISIONS ARE THE WRITTEN OPINIONS OF COURT CASES (SEE CASE ABOVE). DECISIONS ARE ALSO WRITTEN BY HEARING OFFICERS COVERING MATTERS BEFORE ADMINISTRATIVE HEARINGS. ADMINISTRATIVE DECISIONS ARE NOT OFTEN PUBLISHED. SOME AGENCIES HAVE A LOOSE-LEAF SYSTEM OF COLLECTING AND PUBLISHING THEIR DECISIONS, WHILE MOST AGENCIES EITHER DO NOT PUBLISH THEM AT ALL OR SPORADICALLY PUBLISH AND DISTRIBUTE THEM IN MIMEOGRAPH FORM. INDIVIDUAL LAW FIRMS SOMETIMES SUBSCRIBE TO THE DECISIONS OR OPINIONS OF CERTAIN AGENCIES.

14. DICTIONARY

A LEGAL DICTIONARY OR LEGAL GLOSSARY IS A COLLECTION OF WORDS DEFINED IN THE CONTEXT OF THE LAW. THEY ARE FREQUENTLY FOUND AT THE END OF MANY LAW BOOKS AND IN SUCH INSTANCES, THE WORDS DEFINED ARE THOSE WORDS USED IN THE BOOK. BLACK'S LAW DICTIONARY IS A SINGLE VOLUME DICTIONARY OF LEGAL TERMS THAT IS FOUND IN MOST LIBRARIES. THERE IS ALSO A MULTI-VOLUME SET OF WORD DEFINITIONS CALLED WORDS AND PHRASES. THE LATTER GIVES EXACT QUOTATIONS FROM CASES DEFINING THE WORDS OR PHRASES LISTED.

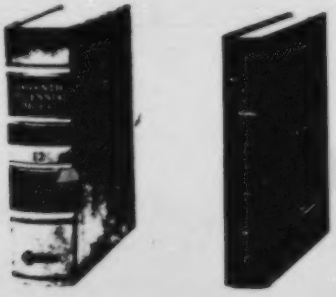
15. DIGEST

ALMOST EVERY REPORTED CASE HAS BEEN BROKEN DOWN INTO

HEADNOTE PARAGRAPHS THAT CLASSIFY THE SUBJECTS DECIDED IN THE CASE AND SUMMARIZE THEM IN BRIEF PARAGRAPHS. EACH HEADNOTE IS ASSIGNED A KEY LABEL AND NUMBER BY THE WEST PUBLISHING COMPANY. FOR EXAMPLE:

> **3. Jury ⇐33(1)**
> Permitting jury foreman who assertedly knew a character witness for accused to remain as foreman was not abuse of discretion.
>
> **4. Criminal Law ⇐1166.16**
> Conduct of trial judge, in interviewing jury foreman, outside presence of defendant and counsel, with regard to foreman's statement that he knew a character witness for accused, was not reversible error.

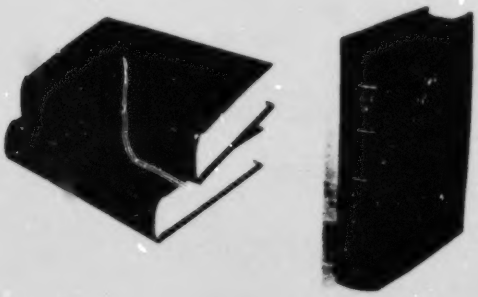
A DIGEST IS A COMPILATION OF HEADNOTES UNDER SIMILAR AREAS OF THE LAW. SUPPOSE, FOR EXAMPLE, THAT A 1950 NEW YORK CASE DEFINED THE WORD "NON-PROFIT CORPORATION" AND ONE OF THE HEADNOTES IN THIS CASE WAS ASSIGNED THE KEY LABEL AND NUMBER, CORPORATE LAW⇐32(16). THEN COMES A 1970 CASE IN NEW YORK DEFINING THE SAME TERM. ONE OF THE HEADNOTES OF THIS CASE WILL STATE THAT THE WORD WAS DEFINED AND WILL BE ASSIGNED THE KEY LABEL AND NUMBER: CORPORATE LAW⇐32(16). THE RESEARCHER CHECKS THE DIGEST AND LOOKS UP CORPORATE LAW⇐32(16) AND HE WILL FIND BOTH THE 1950 AND 1970 CASES CITED AS WELL AS OTHER NEW YORK CASES DEFINING THIS TERM. EACH STATE HAS ITS OWN SET OF DIGEST VOLUMES. THERE ARE ALSO DIGESTS COVERING FEDERAL LAW. FINALLY, THERE IS A MASSIVE SET OF VOLUMES, CALLED DECENNIALS FOUND ONLY IN THE LARGEST LAW LIBRARIES, THAT CONSOLIDATES THE HEADNOTES FROM EVERY COURT IN THE COUNTRY.



16. ENCYCLOPEDIA

A LEGAL ENCYCLOPEDIA IS A MULTI-VOLUME TREATISE OR

COMMENTARY ON THE LAW. THERE ARE TWO MAJOR ENCYCLOPEDIAS, AMERICAN JURISPRUDENCE SECOND AND CORPUS JURIS SECUNDUM. THEY ATTEMPT TO COVER EVERY AREA OF THE LAW.

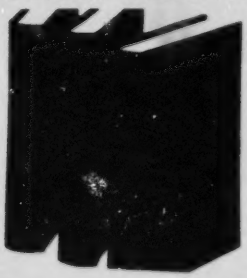


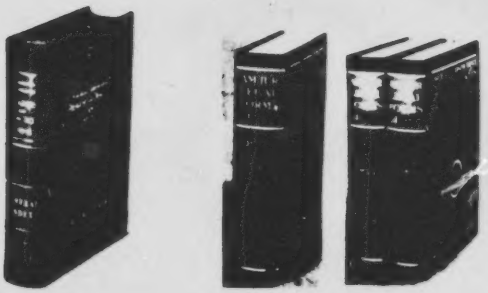
17. EXECUTIVE ORDER

EXECUTIVE ORDERS ARE LAWS OR MESSAGES WRITTEN BY THE CHIEF EXECUTIVE OF THE JURISDICTION: PRESIDENT, GOVERNOR, OR MAYOR. THE PRESIDENT'S EXECUTIVE ORDERS ARE PUBLISHED IN A VARIETY OF BOOKS OR SETS OF BOOKS, E.G., WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, FEDERAL REGISTER, CODE OF FEDERAL REGULATIONS. (THE LATTER VOLUMES ALSO CONTAIN THE REGULATIONS OF THE AGENCIES).

18. FORMBOOK

A FORMBOOK IS A TREATISE OR COMMENTARY OF A PARTICULAR AREA OF THE LAW CENTERED AROUND A SERIES OF PRACTICAL FORMS, CHECKLISTS AND GUIDELINES TO BE USED BY THE PRACTITIONER IN HIS DAILY PRACTICE. AN ANNOTATED FORMBOOK INCLUDES A LISTING OF CASES, IF ANY, THAT HAVE DECIDED THE VALIDITY OF, OR OTHERWISE COMMENTED UPON, THE FORM IN QUESTION. A MULTI-VOLUME SERIES OF FORMS IS AMERICAN JURISPRUDENCE PLEADING AND PRACTICE FORMS ANNOTATED. THERE ARE ALSO MANY SINGLE VOLUME FORMBOOKS, SOMETIMES CALLED PRACTICE BOOKS OR MANUALS.





19. GLOSSARY

SEE DICTIONARY ABOVE.

20. HORNBOOK

A HORNBOOK IS A TREATISE OR COMMENTARY ON THE LAW OF A GIVEN SUBJECT, USUALLY CONTAINED IN SINGLE VOLUMES, E.G., PROSSER ON TORTS, MCCORMICK ON EVIDENCE.

21. INDEX

AT THE END OF INDIVIDUAL LAW BOOKS THERE IS USUALLY AN INDEX COVERING THE TOPICS TREATED IN THE BOOK. FOR MULTI-VOLUME SETS, THE INDEX IS CALLED THE INDEX VOLUMES OR GENERAL INDEX. (THIS IS UNFORTUNATELY NOT TRUE FOR MANY ADMINISTRATIVE REGULATIONS.) THERE IS ONE SET OF VOLUMES ENTITLED INDEX TO LEGAL PERIODICALS WHICH CATEGORIZES MOST WRITINGS IN LEGAL PERIODICALS (SEE LAW REVIEW BELOW) ACCORDING TO AUTHOR AND SUBJECT. THE INDEX COMES OUT PERIODICALLY IN PAMPHLETS WHICH ARE LATER CONSOLIDATED INTO BOUND VOLUMES.

22. INTERSTATE COMPACTS

AN INTERSTATE COMPACT IS AN AGREEMENT BETWEEN TWO OR MORE STATES GOVERNING A PROBLEM OF MUTUAL CONCERN, E.G., THE SUPERVISION OF THE PAROLEE IN ONE STATE WHO HAS MOVED TO ANOTHER STATE. THE COMPACT IS PASSED BY THE LEGISLATURE OF EACH STATE AND IS THEREFORE PART OF THE STATE'S STATUTES. (SEE CODE ABOVE AND LEGISLATION BELOW.) CONGRESS MUST GIVE ITS CONSENT TO EVERY COMPACT. CONGRESSIONAL CONSENT IS PUBLISHED IN THE FORM OF FEDERAL STATUTES.

23. LAW

A LAW IS ANY PUBLIC ORDER OR DECISION THAT IS BINDING

UPON THOSE TO WHOM IT IS ADDRESSED. THERE IS A WIDE VARIETY OF LAW:

A. CONSTITUTIONAL LAW (SEE CONSTITUTIONAL LAW AND CHARTERS ABOVE);
B. STATUTORY LAW (SEE CODE ABOVE AND STATUTE BELOW);
C. RESOLUTIONS (SEE BELOW);
D. DECISIONS (SEE DECISIONS ABOVE AND OPINIONS BELOW);
E. REGULATIONS (SEE BELOW);
F. RULES OF COURT AND PRACTICE (SEE BELOW);
G. TREATIES (SEE BELOW);
H. INTERSTATE COMPACTS (SEE ABOVE);
I. EXECUTIVE ORDERS (SEE ABOVE);
J. LOCAL LAWS AND ORDINANCES (SEE ORDINANCES BELOW);
K. OPINIONS OF THE ATTORNEY-GENERAL (SEE BELOW).

24. LAW REVIEWS

LAW REVIEWS ARE TREATISES (SEE BELOW) PRINTED IN PERIODICAL FORM AS PAMPHLETS AND BOUND VOLUMES, E.G., VANDERBILT LAW REVIEW. THE TERM LAW REVIEW IS GENERALLY MEANT TO REFER TO THE PERIODICALS PREPARED BY INDIVIDUAL LAW SCHOOLS, WHILE THE TERM LEGAL PERIODICALS REFERS TO A BROADER SPECTRUM OF PUBLISHERS, E.G., THE JOURNALS OF THE VARIOUS BAR ASSOCIATIONS.

25. LEGISLATION

LEGISLATION IS THE LAW PASSED BY FEDERAL AND STATE LEGISLATURES AS STATUTES (SEE CODE ABOVE AND STATUTE BELOW) OR RESOLUTIONS (SEE BELOW). WHEN AN ADMINISTRATIVE AGENCY ISSUES RULES AND REGULATIONS (SEE BELOW), THEY ARE SOMETIMES CALLED QUASI-LEGISLATION.

26. MANUAL

A MANUAL IS A COLLECTION OF FORMS (SEE FORMBOOK ABOVE), CHECKLISTS AND GUIDELINES TO THE PRACTITIONER ON HOW TO PRACTICE IN A DESIGNATED AREA OF THE LAW. MANUALS CAN BE PRINTED OR PUBLISHED. MANY LAW OFFICES PIECE TOGETHER THEIR OWN MANUAL FOR IN-HOUSE USE. THEY USUALLY CONSIST OF PROCEDURES FOLLOWED BY THE OFFICE WITH SAMPLE BRIEFS AND PETITIONS.

27. NEWSPAPER

THE LEGAL NEWSPAPER IS OFTEN CALLED THE DAILY LAW JOURNAL PREPARED BY A PRIVATE PUBLISHERS. IT COVERS MATTERS OF LOCAL INTEREST SUCH AS CALENDAR ASSIGNMENT OF JUDGES AND CASES, DECISIONS, ETC.

28. OPINIONS

AN OPINION IS THE WRITTEN OR ORAL DECISION OF A CASE IN LITIGATION (SEE CASE ABOVE AND REPORTER-CASES BELOW). ALSO, THE UNITED STATES ATTORNEY-GENERAL WRITES OPINIONS ON QUESTIONS OF LAW PRESENTED TO HIM BY THE AGENCIES OF THE FEDERAL GOVERNMENT. THESE OPINIONS ARE PRINTED OR REPORTED IN THE VOLUMES CALLED OPINIONS OF THE ATTORNEY-GENERAL. INDIVIDUAL STATES OFTEN HAVE THEIR ATTORNEYS-GENERAL WRITE OPINIONS ON QUESTIONS SUBMITTED BY STATE AGENCIES. THESE OPINIONS ARE PRINTED IN VOLUMES OF THE SAME NAME.

29. ORDINANCE

AN ORDINANCE IS THE LOCAL LEGISLATION OF A CITY, TOWN, OR COUNTY WRITTEN BY THE LOCAL LEGISLATIVE BODY, E.G., CITY COUNCIL, BOARD OF SUPERVISORS. ORDINANCES ARE SOMETIMES CALLED REGULATIONS AS WELL. THEY ARE PUBLISHED (AND SOMETIMES CODIFIED) IN SEPARATE VOLUMES.

30. POCKET-PARTS

A POCKET-PART IS A PAMPHLET THAT FITS INTO A SPECIALLY DEVISED "POCKET" AT THE END OF MANY BOUND BOOKS (PARTICULARLY CODIFIED BOOKS) WHICH PROVIDES THE READER WITH MORE CURRENT DATA THAN WILL BE FOUND IN THE BODY OF THE BOUND BOOK. THE PAMPHLETS ARE ALWAYS PUBLISHED AFTER THE BOUND BOOK WENT INTO PRINT.

31. PRIVATE PUBLISHERS

THE NAMES OF PRIVATE PUBLISHERS OFTEN APPEAR AS PART OF THE TITLE OF CERTAIN LAW BOOKS. FOR EXAMPLE, COMMERCE-CLEARINGHOUSE PUBLISHES MANY LOOSE-LEAF BOOKS ON SPECIALTY AREAS OF THE LAW; MCKINNEY'S IS THE PUBLISHING COMPANY THAT CODIFIES THE STATUTES OF NEW YORK STATE; SHEPARD'S PRODUCES THE CITATORS (SEE ABOVE), WEST PUBLISHING COMPANY PREPARES MANY DIGESTS (SEE ABOVE), ETC.

32. RECORD

THE WORD RECORD IS OFTEN FOUND AS PART OF THE TITLE OF LAW BOOKS. FOR EXAMPLE, THE CONGRESSIONAL RECORD IS A COLLECTION OF DOCUMENTS AND SPEECHES FROM THE AFFAIRS OF CONGRESS. THE WORD IS ALSO USED TO DESIGNATE THE OFFICIAL TRANSCRIPT OF A LEGISLATIVE, ADMINISTRATIVE OR JUDICIAL PROCEEDING (SEE TRANSCRIPT BELOW).

33. REGULATION

THE WORD REGULATION REFERS PRIMARILY TO THE RULES PROMULGATED BY ADMINISTRATIVE AGENCIES. FEDERAL REGULATIONS ARE FIRST PUBLISHED IN THE FEDERAL REGISTER AND THEN CODIFIED IN THE CODE OF FEDERAL REGULATIONS. IN ADDITION, INDIVIDUAL AGENCIES OFTEN PUBLISH SEPARATE SETS OF REGULATIONS. STATE AGENCY REGULATIONS ARE SOMETIMES PRINTED IN A SINGLE SET OF VOLUMES AND CODIFIED IN ANOTHER SET AS WELL. THERE ARE A NUMBER OF PUBLICATIONS CALLED REPORTERS THAT ARE PRINTED IN

PAMPHLET/LOOSE-LEAF FORM WHICH KEEP SUBSCRIBERS UP-TO-DATE ON ADMINISTRATIVE REGULATIONS (SEE REPORTER --COMMENTARIES BELOW).

34. REPORTER --CASES

REPORTERS ARE THE BOOKS CONTAINING THE OPINIONS OF THE COURTS (SEE CASE ABOVE).

35. REPORTER --COMMENTARIES

THE WORD REPORTER IS ALSO USED TO DESCRIBE A LARGE NUMBER OF LOOSE-LEAF TEXTS ON SPECIFIC AREAS OF THE LAW, E.G., POVERTY LAW REPORTER, CRIMINAL LAW REPORTER, PRISON LAW REPORTER. THESE TEXTS GIVE SUBSCRIBERS CURRENT COMMENTARY ON THE LAW AS WELL AS THE LATEST CASES, STATUTES AND REGULATIONS OF THE AREA BEING TREATED. SOME OF THE LOOSE-LEAF REPORTERS ARE LATER PLACED IN BOUND VOLUMES.

36. REPORT

REPORT USUALLY REFERS TO THE MATTER BEING PRINTED IN THE REPORTERS (SEE REPORTERS --CASES ABOVE).

37. REPLACEMENT VOLUME

MANY OF THE LAW BOOKS ARE UP-DATED REGULARLY WITH NEW LAW. SOME SETS OF BOOKS ON PARTICULAR AREAS, E.G., CODE OF FEDERAL REGULATIONS OR WISCONSIN STATUTE ANNOTATED ARE MADE UP OF NUMEROUS VOLUMES. CHANGES IN THE LAW MAY REQUIRE THAT INDIVIDUAL VOLUMES BE THROWN AWAY AND REPLACED WITH NEW VOLUMES. THE LATTER ARE OFTEN CALLED REPLACEMENT VOLUMES.

38. RESOLUTION

A RESOLUTION IS A DECREE OR ORDER PASSED BY A LEGISLATURE (OR BY ONE HOUSE OF THE LEGISLATURE) THAT DOES NOT HAVE THE FORCE OF LAW.

IT EXPRESSES THE SENTIMENT OR OPINION OF THE LEGISLATORS ON A SUBJECT OR IT DEALS WITH HOUSEKEEPING MATTERS OF INTEREST TO THE LEGISLATORS. CONGRESSIONAL RESOLUTIONS ARE PRINTED IN THE CONGRESSIONAL RECORD.

39. RESTATEMENT OF THE LAW

THE AMERICAN LAW INSTITUTE IS AN ORGANIZATION OF LEGAL SCHOLARS. THE INSTITUTE PERIODICALLY PUBLISHES THE RESTATEMENTS WHICH ARE ATTEMPTS TO CLARIFY THE STATUS OF LAW IN CERTAIN AREAS, E.G., RESTATEMENT OF THE LAW OF TORTS. THE RESTATEMENTS ALSO ANALYZE THE LAW AND CONTAIN PRONOUNCEMENTS ON WHAT THE INSTITUTE THINKS THE LAW SHOULD BE.

40. RULES OF COURT AND PRACTICE

INDIVIDUAL COURTS OFTEN PUBLISH RULES ON THE PROCEDURES THAT LAWYERS AND PARTIES MUST FOLLOW IN BRINGING MATTERS BEFORE THE COURT. THESE RULES OF PRACTICE MAY BE PUBLISHED IN SEPARATE VOLUMES OR AS PART OF THE GENERAL SET OF STATUTORY CODES (SEE ABOVE) IN THE JURISDICTION.

41. SESSION LAWS (PUBLIC LAWS, ACTS AND RESOLVES)

WHEN A LEGISLATURE PASSES A LAW, IT IS PRINTED IN THE FORM OF A SLIP LAW (SEE BELOW). SLIP LAWS ARE THEN PRINTED IN CHRONOLOGICAL ORDER IN SESSION LAWS (SOMETIMES CALLED PUBLIC LAWS, ACTS AND RESOLVES OR STATUTES). THESE ARE BOUND VOLUMES DESIGNATED BY THE YEAR THE LAWS WERE PASSED. AT A LATER DATE, MOST OF THESE SESSIONS LAWS ARE CODIFIED IN SEPARATE VOLUMES (SEE CODE ABOVE).

42. SLIP DECISION

WHEN A COURT FIRST ANNOUNCES A DECISION IT IS USUALLY PUBLISHED IN WHAT IS CALLED A SLIP DECISION. IT CONTAINS A SINGLE CASE IN PAMPHLET FORM. THE SLIP DECISIONS ARE LATER PRINTED IN ADVANCE SHEETS WHICH IN TURN BECOME BOUND REPORTERS.

43. SLIP LAW

A SLIP LAW IS THE FORM IN WHICH LAWS OF LEGISLATURES ARE FIRST PRINTED. THEY MAY BE PRINTED ON SEVERAL PIECES OF PAPER OR IN PAMPHLET FORM DEPENDING UPON THE LENGTH OF THE ACT.

44. STATUTE

A STATUTE IS A LAW ENACTED BY A LEGISLATURE PRINTED AS A SLIP LAW (SEE ABOVE) OR AS PART OF A CODE (SEE ABOVE).

45. SUPPLEMENT

A SUPPLEMENT IS A TEXT ADDED TO ANOTHER TEXT TO BRING IT UP TO DATE. (EXCEPTION: THERE IS AN ENTIRE SET OF REPORTERS CALLED THE

FEDERAL SUPPLEMENT WHICH CONTAINS THE COURT OPINIONS OF THE U.S. DISTRICT COURTS.)

46. TRANSCRIPT

A TRANSCRIPT IS THE OFFICIAL RECORD OF A LEGISLATIVE, ADMINISTRATIVE OR COURT PROCEEDING. IT IS MAINLY COMPRISED OF THE WORD-FOR-WORD TESTIMONY OF WITNESSES AND ARGUMENTS BY ADVOCATES AND PRESIDING OFFICERS. LEGISLATIVE TRANSCRIPTS ARE CALLED HEARINGS AND ARE OFTEN PRINTED IN LARGE PAPERBACK VOLUMES. ADMINISTRATIVE AND COURT TRANSCRIPTS ARE SELDOM PRINTED, UNLESS INTERESTED PARTIES ORDER AND PAY FOR TRANSCRIPTIONS FROM THE STENOGRAPHER AT THE PROCEEDING.

47. TREATISE

A TREATISE IS A BOOK OR PAMPHLET OF COMMENTARY ON THE LAW WRITTEN BY LAW STUDENTS, LAWYERS, TEACHERS, JUDGES (IN THEIR NON-OFFICIAL CAPACITY) ETC. (SEE CASEBOOK, DICTIONARY, ENCYCLOPEDIA, FORMBOOK, HORNBOOK, MANUAL, NEWSPAPER, PRIVATE PUBLISHER, REPORTERS--COMMENTARIES, RESTATEMENT OF THE LAW ABOVE).

48. TREATY

A TREATY IS AN AGREEMENT ENTERED INTO BY TWO OR MORE NATIONS. TREATIES ARE FOUND IN A NUMBER OF BOOKS, E.G., U.S. TREATIES AND OTHER INTERNATIONAL AGREEMENTS.

Chapter Four

Citations

A CITATION IS DESCRIPTIVE DATA ABOUT A LAW BOOK OR ABOUT AN ITEM WITHIN A LAW BOOK. A CITATION WILL USUALLY INCLUDE THE FOLLOWING INFORMATION:

A) THE NAME OF THE ITEM.
B) THE AUTHOR OR EDITORS.
C) THE BOOK WHERE THE ITEM IS FOUND (IF THE CITATION IS NOT TO THE BOOK ALONE).
D) OTHER BOOKS WHERE THE SAME ITEM CAN BE FOUND (CALLED A PARALLEL CITE).
E) THE VOLUME NUMBER OF THESE BOOKS (IF THEY ARE PART OF A MULTI-VOLUME SET).
F) THE PAGE ON WHICH THE ITEM BEGINS IN THE BOOK.
G) THE DATE ON WHICH THE BOOK OR ITEM WAS PUBLISHED.
H) MISCELLANEOUS DATA.

1. Citations to Treatises, Hornbooks, etc.

EXAMPLE: Clark, H. The Law of Domestic Relations in the United States (1968)

THE AUTHOR OF THE BOOK IS HOMER (ABBREVIATED "H") CLARK. THE LAST NAME IS PLACED FIRST. THE COMPLETE NAME OF THE BOOK IS THEN GIVEN AND UNDERLINED. FINALLY THE DATE WHEN THE BOOK WAS LAST PUBLISHED (1968) IS PROVIDED AT THE END.

IF THIS TREATISE CONTAINED MORE THAN ONE VOLUME, THEN THE VOLUME THAT YOU ARE REFERRING TO WOULD BE PLACED AFTER THE TITLE OF THE BOOK.

SUPPOSE THAT YOU WANTED TO CITE NOT THE ENTIRE BOOK, BUT A SECTIO OR CHAPTER WITHIN THE BOOK.

EXAMPLE: Clark, H., "The Suit to Annul," The Law of Domestic Relation in the United States, 119-43 (1968).

THE SECTION OR CHAPTER WOULD BE PLACED IN QUOTATION MARKS AND WOULD COME BEFORE THE NAME OF THE ENTIRE BOOK. THE PAGE NUMBERS (119-43) WHERE THE SECTION ON "THE SUIT TO ANNUL" IS FOUND, IS PLACED AFTER THE TITLE OF THE ENTIRE BOOK.

2. Citations to Law Reviews/Periodicals

EXAMPLE: Freed, R., "Computers and the Work of Lawyers," 76 Case and Comment 46 (1971).

THE TITLE OF THE ARTICLE IN THE LAW REVIEW OR PERIODICAL IS PLACED IN QUOTES AFTER THE AUTHOR'S NAME. THEN THE VOLUME NUMBER, (76), WHICH CONTAINS THE ARTICLE, IS GIVEN IMMEDIATELY BEFORE THE NAME OF THE LAW REVIEW OR PERIODICAL ITSELF. (NORMALLY, THE NAME IS ABBREVIATED, E.G., YALE LAW JOURNAL IS YALE L.J.) AFTER THE NAME OF THE REVIEW OR PERIODICAL THERE IS THE PAGE NUMBER ON WHICH THE ARTICLE BEGINS.

SOMETIMES IN LAW STUDENT WRITING, THERE WILL BE NO NAME OF THE AUTHOR GIVEN. IN SUCH INSTANCES, THE WORDS "NOTE" OR "COMMENT" ARE USED IN PLACE OF THE AUTHOR'S NAME.

3. CITATIONS TO STATUTES

STATUTES ARE OFTEN CITED IN A NUMBER OF DIFFERENT WAYS. THE RESEARCHER MUST EXAMINE THE STRUCTURE OF THE CODE OF STATUTES THAT HE IS USING IN ORDER TO KNOW HOW TO CITE IT. (SEE INFRA CHAPTER EIGHT ON READING STATUTORY LAW.)

EXAMPLE: 28 U.S.C.A. § 100 (1958).

THIS CITATION IS TO SECTION 100 OF TITLE 28 OF THE UNITED STATES CODE ANNOTATED (U.S.C.A.) IN THE 1958 EDITION OF THE CODE. OCCASIONALLY, YOU WILL FIND THE NAME OF THE STATUTE (E.G., INTERNAL REVENUE CODE) PLACED BEFORE THE TITLE NUMBER. THE NAME OF THE BOOK IS ALWAYS ABBREVIATED. U.S.C.A. IS NOT CITED BY VOLUME NUMBER, BUT BY TITLE NUMBER BECAUSE THIS IS HOW U.S.C.A. IS ORGANIZED.

SOMETIMES YOU WILL FIND PARALLEL CITATIONS WITH THE CODE CITATION. BEFORE THE STATUTE WAS CODIFIED, FOR EXAMPLE, IT MAY HAVE BEEN PRINTED AS A SESSION LAW. THE SESSION LAW CITE MAY ALSO BE GIVEN.

EXAMPLE: D.C. Code § 12-101 (1967)

THE DISTRICT OF COLUMBIA (D.C.) CODE IS ORGANIZED BY SECTION NUMBERS ONLY. THE "12" WITHIN THE 12-101 NUMBER DOES REFER TO A TITLE, BUT UNLIKE THE U.S.C.A. THIS TITLE NUMBER IS NOT PLACED BEFORE THE NAME OF THE CODE; IT IS PART OF THE SECTION NUMBER.

4. CITATIONS TO CASES

THE NAME OF THE CASE IS UNDERLINED (OR FOUND IN ITALICS).

EXAMPLES: Smith v. Jones; People v. Thomas; United States v. Dow Chemical Co.; In re Edgeworth etc.

WHEN PRIVATE INDIVIDUALS ARE INVOLVED, THEN LAST NAME IS USED. NORMALLY WHEN YOU FIND THE WORD PEOPLE OR THE NAME OF A STATE (E.G., CALIFORNIA) IN A CASE CITATION, THE CASE WILL BE ON A CRIMINAL MATTER. "IN RE" MEANS "IN THE MATTER OF."

EXAMPLE: In re Gault, 387 U.S.1, 87 S.Ct. 1428, 18 L. Ed.2d 527 (1967).

AFTER THE NAME OF THE CASE YOU WILL FIND THE OFFICIAL CITATION (IF IT HAS BEEN PUBLISHED YET) AND THE PARALLEL UNOFFICIAL CITATIONS (IF THERE ARE UNOFFICIAL EDITIONS OF THE COURT'S OPINION). BEFORE THE DATE, YOU WILL FIND THE NAME OF THE COURT WHICH DECIDED THE CASE IF IT IS NOT OTHERWISE CLEAR FROM THE CITATION WHAT COURT WAS INVOLVED. HERE THE ABBREVIATION "U.S." TELLS THE RESEARCHER THAT THE U.S. SUPREME COURT DECIDED IN RE GAULT. THEREFORE, THERE IS NO NEED TO MENTION THE COURT'S NAME BEFORE THE DATE. (SEE EXAMPLES BELOW OF CITATIONS WHERE THE NAME OF THE COURT MUST BE MENTIONED.) THE OFFICIAL CITATION OF THIS CASE IS 387 U.S. 1. THE OPINION IS FOUND IN VOLUME 387 OF UNITED STATES REPORTS (ABBREVIATED U.S.). THE OPINION BEGINS ON PAGE 1. FOR THE U.S. SUPREME COURT, THERE ARE TWO UNOFFICIAL REPORTERS: THE SUPREME COURT REPORTER (S.CT.) AND THE U.S. SUPREME COURT REPORTS LAWYERS EDITION (L. ED.). THE THREE REPORTERS (ONE OFFICIAL AND TWO UNOFFICIAL) ALL CONTAIN THE SAME CASES, BUT THEY ARE FOUND IN DIFFERENT VOLUMES AND ON DIFFERENT PAGES. (THE "2d" AFTER L. ED. REFERS TO "SECOND SERIES." AFTER A CERTAIN NUMBER OF VOLUMES OF REPORTERS HAVE BEEN PUBLISHED, THE PUBLISHERS MAY DECIDE TO START A SECOND OR THIRD SERIES. THIS SIMPLY MEANS THAT STARTING WITH THE NEW SERIES, THE VOLUME NUMBERS BEGIN WITH 1 AGAIN.)

EXAMPLES: Luna v. Star of India, 356 F. Supp. 59 (S.D. Cal. 1973).
United States v. Bohle, 475 F.2d 872 (2nd Cir. 1973).

IN BOTH OF THESE CITATIONS THERE IS A NEED TO STATE THE COURT THAT DECIDED THE OPINION BECAUSE THIS DATA WOULD NOT OTHERWISE BE KNOWN SIMPLY BY LOOKING AT THE REST OF THE CITATION. "F. Supp." MEANS FEDERAL SUPPLEMENT. IT CONTAINS OPINIONS OF THE NUMEROUS U.S. DISTRICT COURTS THROUGHOUT THE COUNTRY. THE LUNA CASE WAS DECIDED IN U.S. DISTRICT COURT IN THE SOUTHERN DISTRICT OF CALIFORNIA. THIS IS ABBREVIATED AS S.D. Cal. IN THE SECOND CITATION, "F.2d" MEANS FEDERAL REPORTER, SECOND SERIES. IT CONTAINS OPINIONS OF THE SEVERAL U.S. CIRCUIT COURTS THROUGHOUT THE COUNTRY. THE BOHLE CASE WAS DECIDED BY THE U.S. CIRCUIT COURT FOR THE SECOND CIRCUIT. THIS IS ABBREVIATED AS 2nd Cir.

FOR STATE COURT OPINIONS, THERE WILL BE NO NEED TO GIVE THE NAME OF THE COURT WHEN THE COURT IS THE HIGHEST COURT OF THE STATE. AS A RULE OF THUMB, IF YOU DO NOT SEE A COURT ABBREVIATION BEFORE THE DATE, YOU WILL KNOW THAT THE CASE WAS DECIDED BY THE STATE'S HIGHEST OR SUPREME COURT. IF A LOWER STATE COURT HAS WRITTEN AN OPINION, ITS ABBREVIATION WILL USUALLY BE FOUND BEFORE THE DATE.

Chapter Five

Components of a Law Book

Law books have a definable style and format. To be sure, there are some texts that are totally unique, E.G., Shepard's Citations. In the main, however, there is a pattern to the texts. The following is a list of items that are contained in many of them.

1. Outside cover.

Looking at the outside cover, you will find the title of the book, the author(s) or editor(s), the name of the publisher (usually at the bottom), the edition of the book (if more than one edition has been printed) and the volume (if the book is part of a series of books). From a glance at the outside cover, the researcher should ask himself a number of important questions:

A) Is it a book of law (written primarily by a court, a legislature or an administrator), or is it a book about the law (written by a scholar who is commenting on the law)?

B) Is this book still operative? Look at the books on the shelf in the area where you found the book that you are examining. Is there a Replacement Volume for your book? Is there a later edition of the book?

2. Publisher's Page

Thumbing through the first few pages of the book, you will often find a page or pages about the publisher. It may list other law books published by the same company plus (in casebooks and hornbooks) a list of names of law professors on the editorial board of the publishing company. The board advises the company on matter pertaining to law texts.

3. Title Page

The title page repeats most of the information contained on the outside hard cover. On the title page, or immediately behind the title page, there is the copyright mark with a date or a series of dates. The most recent date listed indicates the timeliness of the material in the volume. Given the great flux in the law, it is very important to determine how old the text is. Generally speaking a book begins to become dated after the first four or five years. The further you go back, the more out of date and useless the book is.

NOTE THAT IF THE BOOK HAS A POCKET-PART (SEE BELOW) IT HAS BEEN UPDATED TO THE DATE ON THE POCKET-PART.

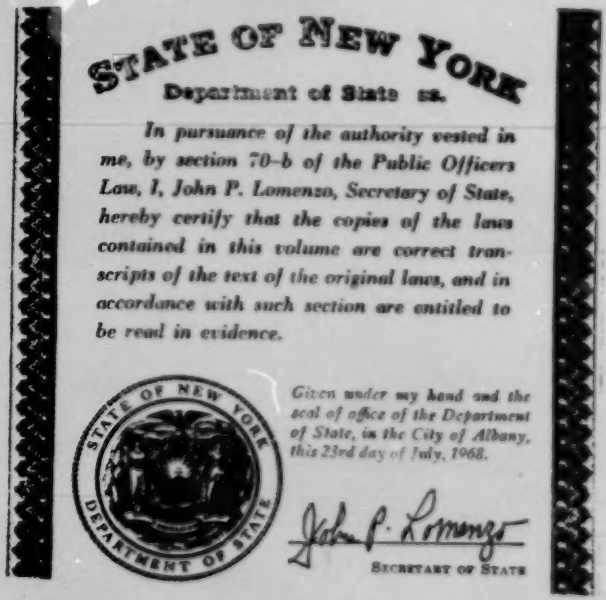
Copyright © 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963
by
THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY

Copyright © 1964
by
THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY

THIS DATA ON THE TITLE PAGE INDICATES THAT THE MATERIAL IN THE BOOK IS CURRENT UP TO 1964.

4. AUTHENTICITY PAGE

BOOKS CONTAINING STATUTES AND CASES OFTEN HAVE A PAGE PREPARED BY THE SECRETARY OF STATE OR THE CHIEF JUDGE OF THE COURT INDICATING THAT THE MATERIALS IN THE BOOK ARE AUTHENTIC. THESE ARE USUALLY OFFICIAL EDITIONS OF THE MATERIAL. OF COURSE, A BOOK THAT DOES NOT HAVE SUCH A PAGE IS NOT TO BE CONSIDERED FRAUDULENT. UNOFFICIAL EDITIONS PREPARED BY PRIVATE PUBLISHERS HAVE USUALLY ACHIEVED GREAT RESPECTABILITY AND ARE USED REGULARLY. IN SOME INSTANCES, COURTS AND LEGISLATURES HAVE ADOPTED THE PRIVATE PUBLISHER'S EDITIONS AS THE OFFICIAL EDITION FOR THE JURISDICTION AND SO INDICATE ON THE AUTHENTICITY PAGE.



STATE OF NEW YORK

Department of State ss.

In pursuance of the authority vested in me, by section 70-b of the Public Officers Law, I, John P. Lomenzo, Secretary of State, hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and in accordance with such section are entitled to be read in evidence.

STATE OF NEW YORK DEPARTMENT OF STATE

Given under my hand and the seal of office of the Department of State, in the City of Albany, this 23rd day of July, 1968.

John P. Lomenzo

SECRETARY OF STATE

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5. Forward or Preface or Explanation

Under such headings, the reader will find some basic information about the book, particularly guidance on how the book was put together and how to use it.

6. Summary Table of Contents

On one or two pages, the reader can find the basic topics treated in the book.

7. Detailed Table of Contents

The detailed table can be very extensive. The major headings of the summary table are repeated plus detailed sub-headings and sub-sub-headings. This table is often used by researchers to determine where, if at all, they will find what they are after in the book. It is often a substitute for an index (see below).

8. Table of Cases

The text may list, alphabetically, every case listed or referred to in the text with the page(s) where the case is found.

9. Summary of Headnotes

If the volume contains unofficial reports of cases, there is usually a number of pages with a listing of major headnotes drawn from those cases.

10. Table of Statutes

The text may list every statute treated or referrred to in the text, plus the page numbers in the book where they appear. This table is sometimes found at the end of the book.

11. List of abbreviations

The abbreviation list is critical and the reader who is new to law books should check this list immediately. It may be the only place in the book where the abbreviations used in the body of the text are spelled out. In Shepard's Citations, for example, the following abbreviations are found in the first few pages of their bound volumes and most of their pamphlets (For more on "shepardizing," see infra Chapter Fourteen):

History of Case

a	(affirmed)	Same case affirmed on appeal.
cc	(connected case)	Different case from case cited but arising out of same subject matter or intimately connected therewith.
D	(dismissed)	Appeal from same case dismissed.
m	(modified)	Same case modified on appeal.
r	(reversed)	Same case reversed on appeal.
s	(same case)	Same case as case cited. In recent editions parentheses are used to denote a parallel reference to the same case.
()	(" ")	
S	(superseded)	Substitution for former opinion.

Treatment of Case

c	(criticised)	Soundness of decision or reasoning in cited case criticised for reasons given.
d	(distinguished)	Case at bar different either in law or fact from case cited for reasons given.
e	(explained)	Statement of import of decision in cited case. Not merely a restatement of the facts.
f	(followed)	Cited as controlling.
h	(harmonized)	Apparent inconsistency explained and shown not to exist.
j	(dissenting opinion)	Citation in dissenting opinion.
L	(limited)	Refusal to extend decision of cited case beyond precise issues involved.
o	(overruled)	Ruling in cited case expressly overruled.
p	(parallel)	Citing case substantially alike or on all fours with cited case in its law or facts.
q	(questioned)	Soundness of decision or reasoning in cited case questioned.

12. Statutory History Table

SOMETIMES THERE IS A LONG OR SHORT TABLE WHICH WILL LIST EVERY STATUTE CITED IN THE BOOK AND INDICATE WHETHER IT HAS BEEN REPEALED OR WHETHER THERE IS A NEW SECTION NUMBER AND TITLE FOR THE STATUTE. THE LEGISLATURE MAY HAVE CHANGED THE ENTIRE NAME OF THE STATUTORY CHAPTER (E.G., FROM PRISON LAW TO CORRECTIONS LAW) AND RENUMBERED ALL OF THE SECTIONS. WITHOUT THIS TABLE, THE RESEARCHER CAN BECOME LOST. IN THE FOLLOWING EXAMPLE, NOTE THAT FORMER PRISON LAW SECTIONS 10-20 ARE NOW FOUND IN CORRECTION LAW SECTIONS 600-610. THE RESEARCHER MAY FIND A CITATION TO A PRISON LAW SECTION IN A BOOK WHICH WAS PUBLISHED BEFORE THE STATE CHANGED TO CORRECTION LAW SECTIONS. WHEN HE GOES TO LOOK UP HIS PRISON LAW SECTION, HE MAY BE LOST UNLESS HE HAS A WAY TO TRANSLATE HIS SECTION INTO A CORRECTIONS LAW SECTION. THE HISTORY TABLE IS ONE WAY TO DO IT.

TABLE OF PRISON LAW SECTIONS

Showing the distribution of those sections of the former Prison Law in effect prior to the general amendment by L.1929, c. 243, which are contained wholly or in part in the Correction Law, or which have been omitted or repealed.

Prison Law Section	Correction Law Section
1	1
10-20	600-610
21	Repealed
22 L.1919, c. 12	611
22 L.1920, c. 933	612
23-32	613-622
40-50	40-50
51	Repealed
52	51
53	52
70	70
71	Omitted
72	71

13. Body of the Text

If the text is a reporter then the body of it will contain case after case arranged in no particular order. Some books, however, do have a pattern or order to them. This is especially true of agency regulations or of statutes that govern the conduct of agencies. The order is somewhat chronological in that it begins with the birth of the agency, how it is set up and how it executes its responsibilities from beginning to end. When referring to the public's contact with the agency, the pattern is often as follows: First there are sections on how citizens apply for the benefits or services of the agency. Then there are sections on how the citizen maintains his services. Then there are sections on how services are terminated. This latter will involve the ground rules for termination in the agency itself with a description of how, if at all, conflicts with the agency get into court. Very often the book will have a number of major divisions, each one of which will have its own chronological sequence.

Note that while it may be helpful to think of the books in this chronological sequence, one must be very careful not to be caught off balance. Sometimes there is no sequence to books at all. Parts of a book may be chronological, while other parts of the same book may be haphazard.

The fundamental characteristic of the body of most texts is that they are arranged according to divisions, sub-divisions, chapters, sub-chapters, parts, sub-parts, sections, sub-sections, etc. Everything is usually numbered and sub-numbered. The reader should thumb through the entire book to get a feel for the numbering and classification system used by the author or editor.

14. Footnotes

Footnotes play a very important part in law books; lawyers place great emphasis on them. Footnotes are often used to give the reader extensive citations to cases and cross-references.

15. Pocket-parts

A unique and indispensable feature of many law books are the pocket-parts. They are additions to the text placed at the very end of the text in a specially devised "pocket" built into the inside of the rear cover. The pocket-parts were published after the book was printed and are designed to bring the book up to date with the latest developments in the field covered by the book. Of course, pocket-parts can grow out of date also. Normally they are replaced every one or two years. The date of the pocket-part must be checked to see what period it covers. On the front cover of the pocket-part booklet, there will be large lettering telling the researcher what period is covered. Hence if the title page (see above) indicates that the last edition of the book was pub-

LISHED IN 1970 AND THE FRONT PAGE OF THE POCKET-PART SAYS "FOR USE DURING 1970 1972," THE RESEARCHER CAN ASSUME THAT THE ENTIRE BOOK CONTAINS THE LATEST MATERIAL UP TO THE END OF 1972. (NOTE THAT CASE REPORTERS NEVER HAVE POCKET-PARTS. CASES PUBLISHED SUBSEQUENT TO THE DATE OF THE VOLUME YOU ARE EXAMINING ARE ALWAYS TO BE FOUND IN SLIP DECISIONS AND ADVANCE SHEETS [PAMPHLETS] WHICH ARE LATER CONSOLIDATED INTO BOUND VOLUMES).

NORMALLY THE ORGANIZATION OF THE POCKET-PART EXACTLY PARALLELS THE ORGANIZATION OF THE MAIN TEXT. TO FIND OUT IF THERE HAS BEEN ANYTHING NEW IN THE AREA COVERED BY CHAPTER 7, PART 2, SECTION 714, OF THE MAIN TEXT, FOR EXAMPLE, THE READER GOES TO CHAPTER 7, PART 2, SECTION 714 OF THE POCKET-PART. IF NOTHING IS FOUND THERE, THEN IN THE OPINION OF THE AUTHOR, NOTHING NEW HAS HAPPENED. IF CHANGES OR ADDITIONS HAVE OCCURRED, THEY WILL BE FOUND THERE.

16. APPENDIX

THE TEXT MAY INCLUDE ONE OR MORE APPENDICES. THESE COULD BE ON ANY NUMBER OF TOPICS. NORMALLY, THEY WILL INCLUDE TABLES, CHARTS OR THE ENTIRE TEXT OF STATUTES OR REGULATIONS, PORTIONS OF WHICH WERE DISCUSSED IN THE BODY OF THE BOOK.

17. GLOSSARY-DICTIONARY

THE BOOK MAY INCLUDE A SELECTED NUMBER OF WORDS USED IN THE BODY OF THE TEXT AND DEFINED IN THE GLOSSARY.

18. BIBLIOGRAPHY

A BRIEF OR EXTENDED BIBLIOGRAPHY OF THE FIELD COVERED BY THE BOOK MAY BE INCLUDED AT THE END OF EACH CHAPTER OR AT THE END OF THE BOOK.

19. INDEX-SPECIFIC

THE INDEX IS A CRITICAL PART OF THE BOOK. UNFORTUNATELY, SOME BOOKS EITHER HAVE NO INDEX OR DO A SLOPPY JOB OF INDEXING (E.G., MANY SETS OF ADMINISTRATIVE REGULATIONS AND LOOSE-LEAF SERVICES FALL INTO THIS CATEGORY). THE INDEX IS ARRANGED ALPHABETICALLY AND SHOULD REFER THE READER EITHER TO THE PAGE NUMBER(S) OR THE SECTION NUMBER(S) WHERE THE ITEM IS TREATED IN THE BODY OF THE TEXT.

THE SPECIFIC INDEX IS AT THE BACK OF THE BOOK. IF THE BOOK HAS TWO OR THREE VOLUMES, THE INDEX MAY BE AT THE END OF THE LAST VOLUME.

20. GENERAL INDEX

IF THERE ARE A LARGE NUMBER OF VOLUMES, OF WHICH YOUR BOOK IS

ONE VOLUME, THERE IS OFTEN A SEPARATE SERIES OF VOLUMES CALLED "INDEX" OR "GENERAL INDEX." THIS BROADER INDEX COVERS EVERY VOLUME IN THE SERIES. THE SPECIFIC INDEX TO THE INDIVIDUAL VOLUMES ARE CONSOLIDATED WITHIN THE GENERAL INDEX.

MAJOR EXCEPTIONS TO WHAT HAS BEEN SAID ABOUT THE SPECIFIC AND GENERAL INDEX ARE CASE REPORTS. THE REPORTERS HAVE NO INDEX AT ALL.

Chapter Six

Finding Ambiguity in the Law

With some practice, you should soon begin looking at the written word with what might be a totally new set of eyes. The good researcher is a chronic skeptic. He takes nothing at face value. Within bounds of reason, he sees ambiguity everywhere. Suppose that you are examining the following statute:

> *"Chronic alcoholic means a person who, in consequence of prolonged excessive drinking, has developed a diagnosable bodily disease or mental disorder."*

This is all that the statute says. There are no cases reported interpreting this section. What ambiguity, if any, do you see in this section? What are some of the questions that you could ask about it? Several are suggested here:

1. What is meant by "chronic?"
2. Does "chronic" mean "a lot of drinking?"
3. Could someone be an "alcoholic" without being "chronic?"
4. Does chronic mean that the person can't help himself from further drinking? Is the statute talking about an "addiction?" (What is addiction? Is it the same as drug addiction?)
5. Does "chronic" mean the same thing as "prolonged excessive drinking?" What is the relationship between these two parts of the statute? What do they add to each other?
6. Suppose someone drinks just a little, but has such weak health, that he develops a diagnosable disease or mental disorder because of drinking. Could this person be a "chronic alcoholic" under the statute? Suppose that a person already had a disease or disorder before he started drinking and the drinking merely aggravated his sickness. Is he covered by the definition of the statute?
7. What is meant by "in consequence of prolonged excessive drinking?" Does the statute mean <u>solely</u> in consequence of "prolonged excessive drinking?" Is the statute just mentioning <u>one</u> of the causes or is it trying to exclude all other causes? (There is a rule of grammar that says that commas before or after a clause in a sentence are to be used when the matter in the clause is not essential to the meaning of the sentence. What do the commas mean before "in" and after "drinking?")
8. What does "prolonged" mean? Over a period of years? Suppose someone drinks night and day for two weeks. Is this "prolonged?" Is it a subjective test?

9. How many drinks is "excessive" or does "excessive" not refer to the quantity of drinks at all?
10. Can someone be a "prolonged" drinker without engaging in "excessive" drinking? What is the relationship between "prolonged" and "excessive?" Is it of any significance that the statute did not say prolonged *and* excessive drinking? Is it of significance that the statute did not say prolonged *or* excessive drinking?
11. What is "diagnosable?" Does it mean that a doctor (any doctor?) can observe the disease or disorder?
12. Could "diagnosable" mean something observable by a layman?
13. Does "diagnosable" mean that there must be some scientific test available which can conclusively say that the disease or disorder is present? Or does it simply mean someone's opinion?
14. What is a "bodily disease?" Is a cold a disease?
15. What is a "mental disorder?" Does it mean that there must be such disorder that the person would have to be hospitalized?
16. Suppose that a person has a "mental disorder" (E.G., insomnia) but is able to function on his job and at home otherwise. Does the statute mean to cover him?
17. Suppose that a rich man has a "bodily disease" or a "mental disorder" as a result of "prolonged excessive drinking," but is under his private doctor's care night and day. Can he argue that he is not a "chronic alcoholic" because the statute was not meant to cover individuals in his situation?
18. Suppose that one spouse coerces another spouse to drink excessively over a prolonged period and a disease or disorder develops. Is this spouse a "chronic alcoholic?" Does the statute mean to cover involuntary alcoholics?

How many of these questions do you think are "excessive" in the sense of grasping at straws? As you begin to read court opinions, you will find that cases often turn on very narrow issues of construction (I.E., interpretation). For the beginning researcher, it is recommended that he let himself be excessive in finding ambiguity. It will be good practice. He will soon learn what ambiguity is real and what is forced. The critical point for the researcher is to develop a very open mind so that he can begin to see or sense questions that might otherwise pass him by.

Chapter Seven

Reading Constitutional Law

Constitutional law (or charter law for some cities and counties) sets out the fundamental ground rules for the conduct of government in the geographical area covered by the constitution. It defines the branches of the government, establishes basic rights of citizens and addresses problems that the framers concluded had to be handled constitutionally rather than through the statutory, judicial or administrative process. In reading constitutional law, a number of guidelines can be helpful:

1. Determine what geographical area the constitution controls.

   A citizen is normally governed by three separate constitutions,

   A) the charter of his city or town;
   B) the constitution of his state;
   C) the constitution of the United States

Normally, on the first page of the constitution it will be made clear what citizens in what geographic area the constitution covers.

2. Thumb through the headings of the constitution or glance through the table of contents.

   How is the document organized? What subjects did the framers want covered by the constitution? A quick scanning of the section headings or table of contents is a good way to get a feel for the structure of the text, and this should be done before the researcher zeros into the particular problem being researched.

3. The critical sections or articles are those that set up and define the powers of the legislative, judicial, and executive branches of government in the jurisdiction covered by the constitution.

   Who passes, interprets and executes the law? For the United States Constitution, "all legislative Powers granted herein shall be vested in a Congress" (Article one, section one); "the judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish" (Article three, section one); and "the executive Power shall be vested in a President of the United States of America" (Article two, section one). The exact scope of these powers, as enunciated elsewhere in the constitution, has been and continues to be an arena of constant controversy and litigation.

4. The amendments to the constitution define or change or add to the body of the text.

THE MAIN VEHICLE FOR CHANGING THE CONSTITUTION IS THE AMENDMENT PROCESS WHICH ITSELF IS DEFINED IN THE CONSTITUTION. THE AMENDMENT PROCEDURES STIPULATED BY CONSTITUTIONS VARY CONSIDERABLY. SOME CONSTITUTIONS, FOR EXAMPLE, CAN BE AMENDED BY A VOTE OF THE PEOPLE IN A GENERAL ELECTION. A CONDITION IN MOST AMENDMENTS IS THAT THEY MUST BE APPROVED BY ONE OR MORE SESSIONS OF THE LEGISLATURE. CONSTITUTIONAL AMENDMENTS USUALLY APPEAR AT THE END OF THE DOCUMENT.

5. CONSTITUTIONS ARE DESIGNED TO BE ALL-INCLUSIVE.

EVERY ACT OF GOVERNMENT AND EVERY RIGHT OF A CITIZEN SHOULD IN SOME WAY HAVE A FOUNDATION IN THE CONSTITUTION. CONSIDERABLE INTERPRETATION OF THE CONSTITUTION IS NECESSARY IN ORDER FOR THIS TO BE SO, GIVEN THE TRUTH OF THE GUIDELINE THAT FOLLOWS.

6. CONSTITUTIONAL LAW IS WRITTEN IN VERY BROAD TERMS.

THERE ARE, OF COURSE, EXCEPTIONS TO THIS, PARTICULARLY WITH RESPECT TO THE CONSTITUTIONS OF LOCAL GOVERNMENTS. IN THE MAIN, HOWEVER, A COMMON CHARACTERISTIC OF CONSTITUTIONAL PROVISIONS IS THEIR BROAD LANGUAGE. HOW WOULD YOU INTERPRET THE FOLLOWING SECTION?

United States Constitution
First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of press, or of the press; or of the right of the people to assemble, and to petition the Government for a redress of grievances.

HOW MANY WORDS IN THIS PROVISION DO YOU NOT UNDERSTAND? WHAT IS "ESTABLISHMENT?" IF THE SCHOOL BOARD HAS STUDENTS RECITING THE LORD'S PRAYER AT THE BEGINNING OF EACH DAY, IS THE SCHOOL BOARD ESTABLISHING A RELIGION? WHAT DOES "ABRIDGING" MEAN? IF A GOVERNMENT OFFICIAL LEAKS OFFICIAL DOCUMENTS TO THE PRESS, AND THE GOVERNMENT TRIES TO SUE THE PRESS TO PREVENT THE PUBLICATION OF THE DOCUMENTS, HAS THE "FREEDOM" OF THE PRESS BEEN ABRIDGED? IF THE PEOPLE HAVE A RIGHT TO "ASSEMBLE," COULD THE GOVERNMENT PASS A LAW PROHIBITING ALL GATHERINGS OF THREE OR MORE PEOPLE AT ANY PLACE WITHIN 1,000 YARDS OF THE WHITE HOUSE GATES? THE QUESTIONS ARISING FROM THE INTERPRETATION OF CONSTITUTIONAL LAW ARE ENDLESS; TENS OF THOUSANDS OF WRITTEN COURT OPINIONS EXIST ON QUESTIONS SUCH AS THESE.

7. CONSTITUTIONAL PROVISIONS REQUIRE CONSTANT INTERPRETATION BECAUSE OF THEIR AMBIGUITY.

THE BROADER THE LANGUAGE, THE MORE AMBIGUOUS IT IS, AND THEREFORE THE GREATER IS THE NEED FOR INTERPRETATION. THIS, OF COURSE, DOES NOT MEAN THAT ANYONE CAN INTERPRET THE CONSTITUTION ANY WAY

HE WANTS TO AND GET AWAY WITH IT. AS INDICATED, NUMEROUS COURT OPINIONS EXIST INTERPRETING CONSTITUTIONAL PROVISIONS. THOSE OPINIONS THAT HAVE NOT BEEN OVERRULED OR MODIFIED MUST BE CONSULTED BEFORE ONE CAN INTELLIGENTLY TALK ABOUT THE CONSTITUTION. AS WE SHALL SEE, HOWEVER, THE EXISTENCE OF SO MANY JUDICIAL INTERPRETATIONS DOES NOT ELIMINATE THE NEED FOR THE RESEARCHER TO IDENTIFY AMBIGUITY IN THE CONSTITUTION. COURT OPINIONS DO NOT COVER EVERY PROBLEM THAT ARISES TODAY, AND FURTHERMORE, THE OPINIONS THEMSELVES ARE OFTEN AMBIGUOUS. (SEE CHAPTER TEN ON READING CASE LAW INFRA).

8. THERE ARE TWO SCHOOLS OF THOUGHT ON INTERPRETING THE CONSTITUTION: THE LIBERAL VERSUS THE STRICT CONSTRUCTIONIST OR CONSERVATIVE SCHOOL.

(NOTE THAT THE LIBERAL/CONSERVATIVE TERMINOLOGY USED HERE DOES NOT REFER TO POLITICAL PHILOSOPHY).

A STRICT CONSTRUCTIONIST OR A CONSERVATIVE IS OFTEN VERY LITERAL IN HIS INTERPRETATION OF THE CONSTITUTION, WHEREAS A LIBERAL TENDS TO GIVE CONSTITUTIONAL LANGUAGE A BROAD APPLICATION. THE ISSUE OF BIRTH CONTROL INFORMATION IS AN EXAMPLE OF HOW THESE TWO SCHOOLS MIGHT CLASH. SUPPOSE A STATE PASSES A LAW FORBIDDING A DOCTOR FROM GIVING INFORMATION ON ARTIFICIAL BIRTH CONTROL TO CITIZENS OF THAT STATE. THE CONSTITUTION OBVIOUSLY SAYS NOTHING ABOUT ARTIFICIAL BIRTH CONTROL. AT THE TIME THE CONSTITUTION WAS WRITTEN, MODERN BIRTH CONTROL DEVICES WERE UNKNOWN. DOES A CITIZEN HAVE A CONSTITUTIONAL RIGHT TO RECEIVE SUCH INFORMATION? A STRICT CONSTRUCTIONIST MIGHT ARGUE THAT THE RIGHT IS NOT EXPRESSLY ESTABLISHED IN THE CONSTITUTION; THEREFORE, THE STATE CAN REGULATE THE DISSEMINATION OF THAT INFORMATION.

A LIBERAL ON THE OTHER HAND, MIGHT INTERPRET SOME BROAD LANGUAGE IN THE CONSTITUTION (E.G., "DUE PROCESS OF LAW"), TO INCLUDE THE RIGHT TO RECEIVE THE INFORMATION. HE WOULD ARGUE THAT THE FRAMERS OF THE CONSTITUTION MEANT IT TO BE A FLEXIBLE DOCUMENT WHICH COULD BE ADJUSTED TO MEET CURRENT PROBLEMS. TO THIS ARGUMENT THE STRICT CONSTRUCTIONIST MIGHT REPLY THAT IF SOMEONE WANTS TO HAVE A CONSTITUTIONAL RIGHT TO RECEIVE THE INFORMATION, HE SHOULD TRY TO AMEND THE CONSTITUTION TO PUT IT IN, AND NOT TRY TO FORCE IT IN BY BROAD INTERPRETATION OF THE LANGUAGE.

9. A CENTRAL QUESTION FOR THE INTERPRETER OF CONSTITUTIONAL LAW IS: WHAT MEANING DID THE AUTHORS INTEND?

COMMON SENSE DICTATES THAT WHEN LANGUAGE IS AMBIGUOUS, THE AMBIGUITY MAY BE RESOLVED BY ATTEMPTING TO DETERMINE WHAT THE AUTHOR OF THE LANGUAGE INTENDED BY IT. WHAT WAS HIS MEANING? IN WHAT CONTEXT WAS HE WRITING? DOES THE CONTEXT SHED ANY LIGHT ON WHAT WAS MEANT? THIS KIND OF ANALYSIS IS FUNDAMENTAL TO LEGAL REASONING WHETHER THE DOCUMENT IS A CONSTITUTION, A STATUTE, A REGULATION, OR A CASE. IT IS PARTICULARLY DIFFICULT TO DO IN THE

CASE OF MOST CONSTITUTIONS WRITTEN OVER A HUNDRED YEARS AGO. THE INTENTION OF THE AUTHORS OR FRAMERS OF THE PHRASE "ESTABLISHMENT OF RELIGION," FOR EXAMPLE, IS NOT EASY TO DETERMINE.

10. COURTS ARE RELUCTANT TO DECIDE CASES INVOLVING CONSTITUTIONAL LAW IF THE CASES CAN BE DECIDED ON OTHER BASES.

WHILE IT IS TRUE THAT THE BROAD LANGUAGE OF THE CONSTITUTION INVITES EXTENSIVE APPLICATION, THE RESEARCHER SHOULD BE AWARE OF THE RELUCTANCE OF JUDGES TO INTERPRET CONSTITUTIONAL LAW. CONCEIVABLY, EVERYONE COULD ARGUE THAT EVERY CASE MUST BE DECIDED ON THE BASIS OF THE CONSTITUTION. SINCE THE CONSTITUTION IS SO FUNDAMENTAL AND AFFECTS SO MANY PEOPLE, HOWEVER, JUDGES PREFER TO MAKE IT THE BASIS OF THEIR OPINION ONLY WHEN THEY HAVE TO. WHEN JUDGES CAN RESOLVE A CASE EITHER BY INTERPRETING A STATUTE OR BY INTERPRETING A CONSTITUTIONAL PROVISION, THEIR INCLINATION IS TO CHOOSE THE FORMER COURSE. IT IS SAID THAT THE GENIUS OF A CONSTITUTION IS ITS FAR-REACHING QUALITY. IT SETS OUT GUIDING PRINCIPLES TO COVER A GREAT VARIETY OF CIRCUMSTANCES. SOME ARGUE THAT IT IS GOOD FOR THESE PRINCIPLES TO BE BROAD AND SOMEWHAT VAGUE SO THAT THEY CAN BETTER ACCOMMODATE THE GREAT FLUX OF HUMAN ACTIVITY. THE MORE THE CONSTITUTION IS INTERPRETED, THE NARROWER THE PRINCIPLES BECOME BY REASON OF THE FACT THAT PEOPLE TEND TO ASSOCIATE THE PRINCIPLE EXCLUSIVELY WITH THE INTERPRETATIONS OF IT, AND THE INTERPRETATIONS DO NOT ALWAYS REFLECT THE FULL SCOPE OF THE PRINCIPLE. THE WAY OUT OF THIS PHENOMENON, ACCORDING TO MANY JUDGES, IS TO INTERPRET THE CONSTITUTION SPARINGLY AND ONLY WHEN NECESSARY.

THIS STATE OF AFFAIRS SHOULD NOT IN THE SLIGHTEST HINDER THE RESEARCHER FROM GOING TO THE CONSTITUTION, IDENTIFYING AMBIGUITY AND COMING UP WITH REASONABLE INTERPRETATIONS IN FAVOR OF THE CLIENT (SEE CHAP. 16 BELOW). THIS IS HIS JOB. HE SIMPLY SHOULD BE AWARE OF THE GENERAL FRAMEWORK WITHIN WHICH CONSTITUTIONAL LAW IS INTERPRETED BY COURTS.

Chapter Eight

Reading Statutory Law

A STATUTE IS AN OFFICIAL ACT OF THE LEGISLATURE PURSUANT TO ITS CONSTITUTIONAL PREROGATIVE OF MAKING OR ENACTING LAWS WITHIN ITS JURISDICTION. STATUTES ARE ALSO CALLED ACTS, LAWS AND LEGISLATION.

BEFORE EXAMINING SOME GUIDELINES THAT MAY BE HELPFUL IN READING STATUTORY LAW LET'S LOOK AT A SAMPLE STATUTE FROM AN ANNOTATED TEXT OF NEW YORK LAW. TO ANNOTATE SIMPLY MEANS TO COMMENT UPON, ADD NOTES TO OR PLACE IN PERSPECTIVE. (SEE PAGE 19 SUPRA AND CHAPTER FOURTEEN INFRA ON ANNOTATIONS). THE SAMPLE IS FROM THE STATUTORY CODE OF NEW YORK (CALLED MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK). THE CODE IS DIVIDED INTO UNITS CALLED LAWS. THE STATUTE ON THE FOLLOWING PAGE IS FROM THE UNIT CALLED CORRECTIONS LAW.

McKINNEY'S CONSOLIDATED LAWS OF NEW YORK, CORRECTIONS LAW (1968)

(1) (2)

§ 146. Persons authorized to visit prisons

The following persons shall be authorized to visit at pleasure all state prisons: The governor and lieutenant-governor, commissioner of general services, secretary of state, comptroller and attorney-general, members of the commission of correction, members of the legislature, judges of the court of appeals, supreme court and county judges, district attorneys and every minister of the gospel having charge of a congregation in the town wherein any such prison is situated. No other person not otherwise authorized by law shall be permitted to enter a state prison except under such regulations as the commissioner of correction shall prescribe. The provisions of this section shall not apply to such portion of a prison in which prisoners under sentence of death are confined.

(3)

(5)

As amended L.1962, c. 37, § 3, eff. Feb. 20, 1962.

(4)

(6)

Historical Note

L.1962, c. 37, § 3, eff. Feb. 20, 1962, substituted "commissioner of general services" for "superintendent of standards and purchase".

(7)

Derivation. Prior to the general amendment of this chapter by L.1929, c. 243, the subject matter of this section was contained in former Prison Law, § 160; originally derived from R.S., pt. 4, c. 3, tit. 3, § 159, as amended L.1847, c. 460.

(8)

Cross References

Promoting prison contraband, see Penal Law, §§ 205.20, 205.25.

(9)

Library References

Prisons ⇐13.
Reformatories ⇐7.

C.J.S. Prisons §§ 18, 19.
C.J.S. Reformatories §§ 10, 11.

(10)

Notes of Decisions

I. Attorneys

Warden of maximum security prison was justified in requiring that interviews of prisoners by attorney be conducted in presence of guard in room, in view of fact that attorney, who sought to interview 34 inmates in a day and a half, had shown no retainer agreements and had not stated purpose of consultations. Kahn v. La Vallee, 1961, 12 A.D.2d 832, 209 N.Y.S.2d 501.

Supreme court did not have jurisdiction of petition by prisoner to compel prison warden to provide facilities in prison which would not interfere with alleged violation of rights of prisoner to confer in private with his attorney. Mummiani v. La Vallee, 1959, 21 Misc.2d 437, 199 N.Y.S.2d 263 affirmed 12 A.D.2d 832, 209 N.Y.S.2d 501.

Right of prisoners to confer with counsel after conviction is not absolute but is subject to such regulations as commissioner of correction not entitled to confer with their attorney privately within sight, but outside of hearing of a prison guard, when warden insisted on having a guard present in order to insure against any impropriety or infraction of prison rules and regulations during interview. Id.

① This gives you the section number of the statute. The mark (§) before "146" means section.

② This is a summarization of what the statutory section is all about. Section 146 covers who can visit state prisons in New York. This summarization was written by the private publishing company (McKinney) and not by the New York State Legislature.

③ Here is the body of the statute written by the legislature.

④ Here you are told that in the Laws (L) of 1962, chapter (c)37, section 3, this statute was changed or amended. The Laws referred to are the Session Laws (see page 29 supra). See the Historical Note (⑥) below for a further treatment of this amendment.

⑤ The amendment to section 146 was effective (eff.) on February 20, 1962. The amendment may have been passed by the legislature on an earlier date, but the date on which it became the law of New York was February 20, 1962.

⑥ The Historical Note is the first extensive annotation in the text. It provides the reader with some of the legislative history of section 146. First of all, the reader is again told that section 146 was amended in 1962. Note that in the second and third lines of the body of the statute, the title "commissioner of general services" is found. The 1962 amendment simply changed the title from "superintendent of standards and purchase" to "commissioner of general services."

⑦ Also part of the Historical Note is the "derivation" section. This tells the reader that the topic of section 146 of the Corrections Law was once contained in section 160 of the Prison Law which dates back to 1847. In 1929 there was another amendment. The historical note, as well as all subsequent annotations, were written by the private publisher and not by the New York State Legislature.

⑧ The "Cross References" refer the reader to other statutes that relate to section 146. Depending upon the subject being researched, this cross reference may or may not be helpful.

⑨ The "Library References" refer the reader to other texts that address the subject area of the statute. On the left hand side, there are two listings, "Prisons" and "Reformatories" each followed by "key numbers" (see page 23 supra). The key numbers refer the reader to the Digests of the West Publishing Co. (see page 22 supra). On the right column there is the abbreviation C.J.S. which stands for Corpus Juris Secundum. This is a legal encyclopedia (see page 23 supra).

(10) The most important annotation is the "Notes of Decisions." Theoretically, this should include a series of paragraphs that briefly summarize every court decision that interpreted or applied the section in question, in this case section 146. Of course, the decisions can only cover cases decided before the book was published. For later decisions, the reader must look to the pocket-part (see page 27 supra). The first decision that treated section 146 was Kahn v. LaVallee. Next is Mummiani v. LaVallee. At the end of the final paragraph, you will find "Id" which means that the paragraph refers to the case immediately cited in the preceeding paragraph, the Mummiani case.

WITH THIS PERSPECTIVE OF WHAT AN ANNOTATED STATUTE LOOKS LIKE, WE TURN TO SOME GENERAL GUIDELINES OF UNDERSTANDING STATUTES.

1. ORGANIZATIONS OF STATUTES ARE HEAVILY STRATIFIED.

THE ANNOTATED STATUTES OF A STATE CAN CONTAIN ANYWHERE FROM FIVE TO SEVENTY-FIVE VOLUMES. THE RESEARCHER, UNFAMILIAR WITH A PARTICULAR SET OF STATUTES, SHOULD INITIALLY LOOK AT THE FIRST FEW PAGES OF THE FIRST VOLUME. THERE HE WILL USUALLY FIND THE SUBJECT MATTER ARRANGEMENT OF ALL THE VOLUMES THAT FOLLOW. FOR EXAMPLE, HE MAY FIND "AGENCY LAW," "CORRECTION LAW," "CORPORATE LAW," "CRIMINAL LAW," ETC. DIFFERENT STATES HAVE DIFFERENT LABELS AND CATEGORIZATION SCHEMES. SOME JURISDICTIONS MAY CALL EACH SUBJECT-MATTER A "CODE," E.G., "CODE OF CRIMINAL PROCEDURE," "INTERNAL REVENUE CODE," ETC. THIS IS SO, FOR EXAMPLE, WITH THE STATUTES OF CONGRESS IN THE UNITED STATES CODE, OR THE ANNOTATED EDITION, UNITED STATES CODE ANNOTATED. FOR PURPOSES OF DISCUSSION WE WILL ASSUME THAT THE ENTIRE SET OF VOLUMES IS CALLED THE "CODE" AND THE INDIVIDUAL SUBJECT MATTERS OR TOPICS WITHIN THE CODE ARE LABELED "LAWS."

THE INDIVIDUAL TOPICS ARE FURTHER BROKEN DOWN INTO TITLES, PARTS, ARTICLES OR CHAPTERS, WHICH ARE THEN BROKEN DOWN INTO SECTIONS AND SUB-SECTIONS. HERE IS AN EXAMPLE OF A POSSIBLE CATEGORIZATION FOR THE STATE OF "X:"

X Code Annotated
Corporate Law
Title 1. (or Article 1 or Chapter 1) Forming a Corporation
Section 1. Choosing a Corporate Name
Subsection 1 (a). Where to File the Name Application
Subsection 1 (b). Displaying the Name Certificate
Subsection 1 (c). Changing the Corporate Name

NOTE AGAIN HOWEVER, THAT EACH JURISDICTION MAY ADOPT ITS OWN LABELS. WHAT IS A CHAPTER IN ONE STATE MAY BE CALLED A TITLE IN ANOTHER. HENCE THE FIRST THING THAT THE RESEARCHER MUST DO IS DETERMINE HOW THE SET OF STATUTES HE IS STUDYING USES THE LABEL: LAW, CODE, TITLE, ARTICLE, CHAPTER, SECTION AND SUBSECTION.

NOT INFREQUENTLY, A JURISDICTION WILL COMPLETELY REVISE ITS LABELING SYSTEM. WHAT WAS ONCE "PRISON LAW," FOR EXAMPLE, MAY NOW FALL UNDER THE TOPIC HEADING OF "CORRECTIONS LAW." THIS MAY NOT SIMPLY MEAN A CHANGE IN LABELS; THE NUMBERING SYSTEM MAY BE CHANGED AS WELL. WHAT WAS ONCE SECTION 73(B) OF "CORPORATIONS LAW" MAY NOW BE SECTION 13(B) OF THE "BUSINESS AND PROFESSIONS LAW." IF SUCH A REORDERING HAS OCCURRED, THE RESEARCHER WILL BE ABLE TO FIND OUT ABOUT IT EITHER IN THE STATUTORY HISTORY TABLE AT THE BEGINNING OF THE VOLUME (SEE PAGE 37 SUPRA) OR IN THE HISTORICAL NOTE AT THE BOTTOM OF THE SECTION.

2. WITHIN EACH GENERAL SUBJECT MATTER OF LAW OF THE OVERALL SET OF VOLUMES, THE TOPICS USUALLY ARE ARRANGED CHRONOLOGICALLY.

STATUTES ARE MAINLY CARRIED OUT BY ADMINISTRATIVE AGENCIES. THE AGENCY MAY BE A GRANT MAKING OR SERVICE AGENCY (E.G., SOCIAL SECURITY ADMINISTRATION, POLICE DEPARTMENT) OR A REGULATORY AGENCY (E.G., FEDERAL POWER COMMISSION, STATE UTILITIES COMMISSION). AS INDICATED ABOVE (PAGE 38 SUPRA) STATUTES THAT COVER AGENCIES ARE SOMETIMES ORGANIZED CHRONOLOGICALLY IN THE SENSE THAT THE STATUTE WILL BEGIN WITH THE CREATION OF THE AGENCY AND MOVE THROUGH TO THE POINT WHERE A CITIZEN TERMINATES HIS RELATIONSHIP WITH THE AGENCY. THE SEQUENCE WILL OFTEN BE AS FOLLOWS:

a. *the agency is created;*
b. *the agency is given a name;*
c. *the administrators of the agency are given names and powers;*
d. *the budgetary process of the agency is defined;*
e. *the way in which the public first comes into contact with the agency is defined, e.g., how to apply for the benefits or services of the agency;*
f. *the way in which the agency maintains its service is defined, e.g., how a citizen changes from one agency program to another;*
g. *the way in which the agency must act when a citizen complains about the agency's decisions is defined;*
h. *the way in which the agency must go about terminating a citizen from its services is defined;*
i. *the way in which a citizen can complain in court, if not satisfied with the way the agency handled his complaint, is defined.*

THIS ORDERING, OF COURSE, IS NOT ALWAYS FOLLOWED; IT IS SIMPLY A GENERAL FRAMEWORK FROM WHICH THE RESEARCHER CAN ANALYZE THE PECULIARITIES OF HOW EACH SUBJECT-MATTER IS COVERED.

3. ALL STATUTES MUST BE BASED UPON SOME PROVISION IN THE CONSTITUTION GIVING THE LEGISLATURE THE POWER TO PASS THE STATUTE.

LEGISLATURES HAVE NO POWER TO LEGISLATE WITHOUT CONSTITUTIONAL AUTHORIZATION. THE AUTHORIZATION MAY BE THE GENERAL CONSTITUTIONAL PROVISION VESTING ALL LEGISLATIVE POWERS IN THE LEGISLATURE, OR IT MAY BE A SPECIFIC PROVISION SUCH AS THE AUTHORITY TO RAISE REVENUE THROUGH ISSUING BONDS. THE "CROSS REFERENCE" ANNOTATION WILL SOMETIMES TELL THE READER FROM WHAT CONSTITUTIONAL PROVISION THE STATUTE IS DERIVED.

4. STATUTORY LANGUAGE TENDS TO BE UNCLEAR.

SELDOM, IF EVER, IS IT ABSOLUTELY CLEAR WHAT A STATUTE MEANS OR HOW IT APPLIES TO A SET OF GIVEN FACTS. THIS IS NOT ALWAYS THE RESULT OF POOR DRAFTSMANSHIP ON THE PART OF THE LEGISLATORS WHO ARE OFTEN ASKED TO LEGISLATE FOR OR AGAINST UNKNOWN OR UNDEFINED CIRCUMSTANCES. BECAUSE OF THIS, THEY SOMETIMES "BUILD IN" AMBIGUITY. THIS FACTOR, PLUS THE AMBIGUITY OF WORDS GENERALLY, ACCOUNTS FOR STATUTORY LANGUAGE THAT REGULARLY REQUIRES CLOSE SCRUTINY AND INTERPRETATION.

5. A CENTRAL CONCERN IN READING STATUTES IS DETERMINING WHAT THE LEGISLATURE INTENDED.

IT IS APPROPRIATE FOR THE RESEARCHER TO ASK WHAT THE COMMON SENSE MEANING OF THE LANGUAGE IN STATUTES IS TO HIM. HE SHOULD THEN ASSESS WHETHER THE LEGISLATURE HAD THE SAME MEANING IN MIND WHEN IT WROTE THE LANGUAGE. DETERMINING LEGISLATIVE INTENT IS ONE OF THE MOST DIFFICULT UNDERTAKINGS IN THE LAW. WHEN APPROPRIATE, THE RESEARCHER MAY STUDY THE LEGISLATIVE HISTORY OF THE STATUTE TO DETERMINE ITS CONTEXT. LEGISLATIVE HEARINGS, FOR EXAMPLE, MAY HAVE BEEN HELD ON THE STATUTE BEFORE IT BECAME LAW. STUDYING THE TRANSCRIPT OF THE HEARINGS AND COMMITTEE REPORTS ON THE SUBJECT, IF ANY, AND IF AVAILABLE, WILL OFTEN SHED LIGHT ON WHAT THE LEGISLATORS WERE TRYING TO DO BY PASSING THE STATUTE. SUCH INSIGHTS CAN BE HELPFUL IN UNDERSTANDING THE MEANING OF THE STATUTORY LANGUAGE.

6. STATUTES ARE TO BE READ LINE BY LINE, PRONOUN BY PRONOUN, PUNCTUATION MARK BY PUNCTUATION MARK.

STATUTES CANNOT BE SPEED READ. THEY SHOULD BE READ WITH THE SAME CARE THAT YOU WOULD HAVE TO BRING TO BEAR IF YOU WERE TRANSLATING THE LANGUAGE TO ENGLISH FROM A FOREIGN TONGUE. ALL TOO OFTEN, FOR EXAMPLE, THE CARELESS READER WILL READ "OR" WHEN HE SHOULD HAVE READ "AND."

READING STATUTES IS SOMETHING THAT THE RESEARCHER MUST GET USED TO. THE STYLE OF STATUTORY WRITING CAN BE VERY PAINFUL.

SENTENCES SOMETIMES APPEAR ENDLESS AND THERE ARE OFTEN SO MANY QUALIFICATIONS AND EXCEPTIONS BUILT INTO THE STATUTE THAT IT APPEARS INCOMPREHENSIBLE. THE RESEARCHER WHO IS CONFUSED AND FRUSTRATED SHOULD NOT DESPAIR; THESE ARE VERY NATURAL AND COMMON FEELINGS. THE KEY IS PERSERVERENCE AND A WILLINGNESS TO TACKLE THE STATUTE SLOWLY, PIECE BY PIECE.

7. CHECK TO SEE IF A STATUTORY UNIT HAS A DEFINITIONS SECTION.

AS INDICATED, CODES ARE BROKEN DOWN INTO SUB-HEADINGS CALLED CHAPTERS, TITLES, ARTICLES, ETC. THESE SUB-HEADINGS ARE SOMETIMES FURTHER STRATIFIED INTO OTHER UNITS. VERY OFTEN AT THE BEGINNING OF EACH UNIT OR TOPIC THERE IS A SECTION ON DEFINITIONS. THIS SECTION WILL DEFINE A NUMBER OF WORDS THAT WILL BE USED IN THE REMAINING SECTIONS OF THE UNIT. THIS SECTION SHOULD ALWAYS BE READ BEFORE THE RESEARCHER STUDIES ANY OTHER SECTION IN THE UNIT.

§ 31. **Definitions.**—As used in this article, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

1. "State" shall mean and include any state, territory or possession of the United States and the District of Columbia.

2. "Court" shall mean the family court of the state of New York; when the context requires, it shall mean and include a court of another state defined in and upon which appropriate jurisdiction has been conferred by a substantially similar reciprocal law.

3. "Child" includes a step child, foster child, child born out of wedlock or legally adopted child and means a child under twenty-one years of age, and a son or daughter twenty-one years of age or older who is unable to maintain himself or herself and is or is likely to become a public charge.

4. "Dependent" shall mean and include any person who is entitled to support pursuant to this article.

5. "Petitioner" shall mean and include each dependent person for whom support is sought in a proceeding instituted pursuant to this article.

6. "Respondent" shall mean and include each person against whom a proceeding is instituted pursuant to this article.

7. "Petitioner's representative" shall mean and include a corporation counsel, county attorney, state's attorney, commonwealth attorney and any other public officer, by whatever title his public office may be known, charged by law with the duty of instituting, maintaining or prosecuting a proceeding under this article or under the laws of the state or states wherein the petitioner and the respondent reside.

8. "Summons" shall mean and include a subpoena, warrant, citation, order or other notice, by whatever name known, provided for by the laws of the state or states wherein the petitioner and the respondent reside as the means for requiring the appearance and attendance in court of the respondent in a proceeding instituted pursuant to this article.

9. "Initiating state" shall mean the state of domicile or residence of the petitioner.

10. "Responding state" shall mean the state wherein the respondent resides or is domiciled or found.

8. STATUTES SHOULD BE BRIEFED.

BRIEFING A STATUTE SIMPLY MEANS OUTLINING IT AND BREAKING DOWN ITS COMPONENT PARTS IN ORDER TO SEE IT MORE CLEARLY. THE FOLLOWING ARE SOME OF THE QUESTIONS THAT THE RESEARCHER COULD ASK HIMSELF IN BRIEFING A STATUTE:

a. What is the citation (the name of the state, name of the statutory code, the subject-matter, volume of the code, number of the section, date of the volume)?

b. Whom is the statute addressed to? (to everybody, to the director of an agency, to citizens who want to do certain things?)

c. Does the statute make reference to other statutes? (if so, then the statute being read may not be intelligible without also studying the other statutes.)

d. Is there a condition that will make the statute operative? (very often the statute will have a "whenever" or a "whereever" clause indicating that whenever a certain set of facts occur, the statute will be applied; without the occurrence of the facts, however, the statute won't apply.)

e. What or who does the statute specifically include in its provisions?

f. What or who does the statute specifically exclude from its provisions?

g. Is the statute mandatory or discretionary? (does it say or imply that someone "must" or "shall" do something, or does it say or imply that someone "may" or "can" do something?)

h. Briefly summarize, in your own words, what the statute means to you.

Chapter Nine

Reading Regulations

A REGULATION IS AN OFFICIAL RULE OR RULING OF AN ADMINISTRATIVE AGENCY. JUST AS THE LEGISLATURE PASSES STATUTES, SO THE AGENCY PASSES REGULATIONS. THE REGULATIONS OF AGENCIES ARE SOMETIMES REFERRED TO AS QUASI-LEGISLATION BECAUSE OF THEIR SIMILARITY TO THE STATUTES OF LEGISLATURES.

1. Regulations are sometimes organized into chapters, sub-chapters, parts, sections.

See Chapter Eight above on the organization of statutes. The same guidelines apply to regulations. Unfortunately, however, regulations are not as well organized as statutes usually are. There are many agencies writing regulations; few of them have coherent systems of organizing and distributing the regulations. A major exception is the federal agencies whose regulations are first published in the Federal Register and then codified in the Code of Federal Regulations.

2. Regulations should be briefed.

Use the same briefing model described for statutes. (See Chapter Eight above).

3. Agency regulations are based on statutes.

Normally an agency does not have the power to write regulations unless it has specific statutory authority to do so. An examination of the statute giving the agency this authority can be helpful in understanding the regulations themselves.

More broadly, the function of the agency is to carry out the legislative mandates of the statutes; administrators must carry out the law as defined for them in the statutes. Hence, the researcher should be familiar with the statutory foundation of the agency not only to place the regulations in context, but also to be constantly conscious of an overriding issue: is the agency carrying out or violating the intent of the legislature as defined in the statutes?

4. Regulations are designed to translate the policy guidelines of statutes into the details of running an agency.

In theory, the legislature in its statutes sets out the purpose of the agency and defines its overall policies, and leaves to the agency, through its regulations, the task of filling in the

SPECIFICS WHICH WILL CARRY OUT THE PURPOSE AND POLICY OF THE AGENCY. REGULATIONS, THEREFORE, TEND TO BE VERY DETAILED.

5. REGULATIONS ARE OFTEN UNCLEAR.

DETAIL DOES NOT NECESSARILY MEAN CLARITY. AMBIGUITY IN REGULATIONS EXISTS AND IT IS THE JOB OF THE RESEARCHER TO DEAL WITH IT.

6. REGULATIONS ARE OFTEN ORGANIZED CHRONOLOGICALLY.

JUST AS STATUTES DEFINING THE ROLES OF AN AGENCY ARE OFTEN ARRANGED CHRONOLOGICALLY, REGULATIONS TEND TO FOLLOW THE SAME PATTERN. REGULATIONS SO ORGANIZED WILL BEGIN BY DESCRIBING THE PROCESS OF APPLICATION FOR SERVICES AND RUN THROUGH TERMINATION.

7. REGULATIONS SHOULD BE READ IN SEGMENTS, PIECE BY PIECE.

SEE CHAPTER EIGHT SUPRA ON READING STATUTES SEGMENT BY SEGMENT. THE SAME GUIDELINES APPLY TO READING REGULATIONS.

Chapter Ten

Reading Case Law

A CASE IS A WRITTEN COURT OPINION. WE WILL EXAMINE SOME TECHNIQUES OF READING CASES BY STUDYING A CASE FROM A COURT REPORTER (THE CALIFORNIA REPORTER). THE CASE HAS BEEN EDITED AND SECTIONS HAVE BEEN ADDED IN ORDER TO HIGHLIGHT SPECIFIC COMPONENTS OF OPINIONS. (FOR MORE ON READING CASES, SEE CHAPTER TWELVE INFRA ON ANALOGIZING CASES).

The PEOPLE of the State of California, Plaintiff and Appellant,

v.

Ronald James BRUNI, Defendant and Respondent.

Cr. 10066.

Court of Appeal, First District, Division 1.

April 27, 1972.

The Superior Court, County of San Mateo, W. Howard Hartley, J., dismissed information after suppression of evidence where the evidence was obtained pursuant to search warrant specifying "daytime" service but served at 9:30 p. m., and the People appealed. The Court of Appeal held that service under search warrant specifying "daytime" service but served at 9:30 p. m. was valid since it was within hours specified under amended provision for time of service of search warrant providing instead of "daytime" that normal service was proper "between the hours of 7 o'clock a. m. and 10 o'clock p. m."

Judgment reversed and trial court directed to deny motion to suppress the evidence.

1. Searches and Seizures ⇐3.8(1)

In light of amendment of provision as to time of service of search warrant providing instead of "daytime" that normal service was proper "between the hours of 7 o'clock a. m. and 10 o'clock p. m.," "daytime" in provision for form for warrant was impliedly amended to provide same period for service as that under the other amended provision. West's Ann.Pen.Code, §§ 4, 7, 1529, 1533; West's Ann.Code Civ. Proc. § 1859.

2. Searches and Seizures ⇐3.8(1)

Service under search warrant specifying "daytime" service but served at 9:30 p. m. was valid since it was within hours specified under amended provision for time of service of search warrant providing instead of "daytime" that normal service was proper "between the hours of 7 o'clock a. m. and 10 o'clock p. m." West's Ann.Pen. Code, §§ 1529, 1533.

Evelle J. Younger, Atty. Gen. of California, Edward P. O'Brien, Robert R. Granucci, Deputy Attys. Gen., San Francisco, for appellant.

William F. DeLucchi, Regalado & Lindquist, Redwood City, for respondent.

Smith, Judge

The People appeal from a judgment dismissing an Information after suppression of evidence, where the evidence was obtained pursuant to a search warrant specifying "daytime" service, but which was served at 9:30 p. m. at night.

In 1970, section 1533 of the Penal Code was amended to eliminate the provision for "daytime" service for normal service of a search warrant. Instead of "daytime," the statute now specifies normal service as proper "between the hours of 7 o'clock a. m. and 10 o'clock p. m." Apparently by oversight, the Legislature neglected to also amend the mandatory provisions under section 1529 of the Penal Code, which continues to require "daytime" service. An inconsistency exists as to the mandatory requirements of search warrants unless section 1529 of the Penal Code is read as having been amended by implication when section 1533 of the Penal Code was expressly amended. Otherwise, the only warrant an issuing magistrate could authorize, without possibly violating one or the other statute, would be one for unlimited service at any hour of day or night upon a showing of good cause. Nothing suggests that this was the legislative intent.

The provisions of the Penal Code "are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice." (Pen.Code, § 4.) "In the construction of a statute

the intention of the Legislature . . . is to be pursued, if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former." (Code Civ.Proc., § 1859.)

[1] Under the definition in Section 7 of the Penal Code, daytime is defined as "the period between sunrise and sunset." This general provision is clearly inconsistent with the particular provision relating to service of search warrants between the hours of 7 o'clock a. m. and 10 o'clock p. m. established under the amendment of section 1533 of the Penal Code. Under the general rules of statutory construction, we interpret "daytime" in the particular provisions of section 1529 of the Penal Code as having been impliedly amended to provide the same period for service as that under amended section 1533 of the Penal Code.

". . . 'where the language of a statute is reasonably susceptible of two constructions, one of which in application will render it reasonable, fair and harmonious with its manifest purpose, and another which would be productive of absurd consequences, the former construction will be adopted.' (citation); and 'if certain provisions are repugnant, effect should be given to those which best comport with the end to be accomplished and render the statute effective, rather than nugatory.'" (Dept. of Motor Vehicles of California v. Indus. Acc. Com. (1939) 14 Cal.2d 189, 195, 93 P.2d 131, 134.)

[2] We hold that the People are correct in their assertion that service was valid since it was within the hours specified under amended section 1533 of the Penal Code. Any other holding would mean that section 1529 of the Penal Code would now require service at hours determined to be peculiarly abrasive and requiring a higher standard of proof (Tidwell v. Superior Court (1971) 17 Cal.App.3d 780, 786–787, 95 Cal.Rptr. 213) without a showing of good cause.

This court has always been scrupulous in demanding a high standard for the admission of evidence pursuant to warrants. Our ruling today does not violate this standard. The integrity of our trial system in large measure depends upon the integrity of the evidence admitted at trial.

The case before us deals with the timing of serving a warrant. If the case had involved other aspects of the warrant such as its specificity, our result would probably have been different. (21)

The judgment is reversed, and the trial court is directed to deny the motion to suppress the evidence. (20)

Jones, Judge (Concurring in result only) (22)

Thomas, Judge (Dissenting) (23)

If the California legislature intended to amend section 1529 of the Penal Code, it should have done so expressly. It is not the function of the judiciary to amend the statutes passed by the legislature. The public has a right to rely on the written language of statutes; in fact, we frequently admonish the citizenry if they ignore that language. For the courts to alter the language after the fact not only infringes upon the right of the legislature to be the sole entity under our system that can enact and amend legislation, but also is a signal to the public and to government officials that they can no longer trust the law as validly passed by the legislative branch. Both results are intolerable.

I would affirm the judgment below.

① The California Reporter is an unofficial reporter of state opinions in California. The "100" indicates the volume number of the reporter.

② The court opinion begins on page 600. This is very important to note for citation purposes. (Part of the unofficial citation of this case would be 100 Cal. Rptr. 600).

③ Normally when the "People" or the state brings an action, as plaintiff, it is a criminal case. This is an appellate court decision. Trial court decisions are appealed to the appellate court. The "appellant" is the party bringing the appeal because he was dissatisfied with a ruling or decision of the lower court. Hence the People of California was the plaintiff in the lower court (Superior Court, County of San Mateo) and is now the appellant in the higher court (Court of Appeal, First District, Division 1).

When the name of the case is being cited, only the word "People" is used.

④ Bruni was the defendant in the lower court since he was being sued, or in this case, charged with a crime. The appeal is taken against him by the People (appellant) because the lower court ruling was favorable to Bruni to the dissatisfaction of the People. The party against whom a case is brought on appeal is called the "respondent." Another word for respondent is "appellee."

⑤ "Cr. 10096" means the docket or calendar number of the case. "Cr." stands for "criminal." This number is rarely of any importance to the researcher.

⑥ The first thing that a researcher should do when reading a case is to make careful note of the name of the court writing the opinion. As soon as possible, the researcher must learn the hierarchy of courts in his state as well as the federal hierarchy. Normally, there are three levels of courts: trial level, first appeal level and supreme level. (Most cases are appealed from the trial court to the first appeal level and then to the supreme level). Here, we know from the title of the court that it is an appellate court. It is not the supreme court because in California the highest court is called the California Supreme Court.

The name of the court is significant because of "legal authority" (see Chapter Eleven infra). If the court were the highest or supreme court of the state then the case would be applicable throughout the state. A middle appeals court decision, on the other hand, applies only in the area of the state over which it has jurisdiction. The jurisdiction of a trial court is even more narrow. When the reader sees that the opinion has been written by a trial or middle appeals court, he is immediately put

on notice that he should check to determine whether the case was ever appealed subsequent to the date of the opinion before him. This checking process is called shepardizing (See Chapter Fourteen infra).

⑦ When a case is being cited, only the year (here, 1972) is used and not the month or day. April 27, 1972 is the date of the decision. Sometimes, the date of the hearing will be given as well as the date of the decision. The latter date is still the critical one for citation purposes.

⑧ Here the editors provide the reader with a summary of what the opinion says. The court did not write this summary; the editors did. It is, therefore, not an official statement of the law. It is merely an aid to the reader. He may have many cases to read and time to read only a few. He sometimes reads this summary to let him know if the opinion covers the areas he is interested in.

⑨ Here continues the unofficial summary, providing the reader with what procedurally must happen as a result of the April 27 opinion.

⑩ Here begins more summaries. These are the editor's headnotes -- again not the language of the court (the opinion has not yet begun). The editors first read the opinion and decide how many major topics are treated by the court. Each topic is given a paragraph and a number. See ⑩a in the opinion itself for the numbers [1] and [2]. These bracketed numbers correspond with the numbers of the headnotes.

The headnotes (see page 23 supra) have a title and a key number, here "Searches and Seizures ⇐ 3.8(1)." This paragraph will be printed in the Digest system of the West Publishing Company. The headnotes serve two purposes. First, they are a summary of the points covered in the opinion and are a shorthand way of a researcher's finding out if it is worth his while to read or study the entire opinion. Second, the researcher can find out what other courts have said about the same or similar points in the paragraph headnotes by going to the Digest system, looking up the title of the headnote (here Searches and Seizures, ⇐ 3.8(1)) and reading summary paragraphs from other court opinions (see page 23 supra).

⑪ Here are listed the attorneys that represented the appellant and respondent on appeal. Note that the attorney general's office represented the People. The attorney general or the district attorney's office represents the state in criminal cases.

⑫ The opinion begins with mention of the name of the judge who wrote the opinion, Judge Smith. In this spot you will sometimes

find the words "The Court," "Per curiam," "En Banc" or "Memorandum Opinion" meaning that the entire court (consisting of any where from three to twenty-three judges) "wrote" the opinion. One judge wrote the opinion, but the court decided not to mention the name of any individual judge.

(13) In briefing a case, the first chore of the researcher is to make note of the judicial history of the case to date. The lower court dismissed the Information (similar to an indictment) against Bruni after certain evidence was suppressed (i.e., declared inadmissible), and the People appealed this dismissal judgment.

If the words "Information" or "suppression" are new to the researcher, he should look them up in a legal dictionary before proceeding. This is true of every strange word. It is a good practice for the researcher to begin compiling his own legal dictionary in which he defines most of the words checked in dictionaries such as Black's Law Dictionary (see page 22 supra).

(14) It is critical for the researcher to state the facts of the case. Here the facts are relatively simple: a search warrant that said "daytime" service was served at 9:30 p.m. and evidence was taken pursuant to this search warrant. In most cases the facts are rarely this simple. The facts are sometimes given at the beginning of the opinion, as here, and other times they are scattered throughout the opinion. If he confronts the latter situation, the researcher must carefully read the entire case to piece the facts together. The facts are critical because the researcher must assess how analogous the facts of his own problem are to those of the case he is briefing (assuming that the issues in the problem are covered in the case at all). If his facts are the same or substantially the same as those of the case, then the law of the case will probably apply to his problem. If the facts of his problem are somewhat the same and somewhat different from those of the case, then it is much more debatable whether the case is analogous and therefore whether the law of the case applies (see Chapter Twelve infra).

(15) The next critical stage of reading a case is to state the issue (or issues) that the court was deciding in the case. This is often a difficult task since many opinions are long and complicated. Judges often ramble on to talk about many subjects. The researcher must be able to identify the primary issue that the court was deciding. The issue in People v. Bruni is not difficult to state: is evidence admissible which was obtained pursuant to a daytime warrant but served at 9:30 p.m. when there is an inconsistency in the statutes as to when service must take place? The court does not quote extensively from any of the relevant statutes. The researcher should find the full statutes in his library and read them on his own if he thinks it would aid him in following what the court is saying. If for example, he wants to

read the entire version of section 1533 before and after the amendment, he would go to the California statutes, look up the Penal Code and find section 1533. Depending upon how old the code volume is, he may have to check the pocket part to find the 1970 amendment. The old and the amended section 1533 are as follows:

> **§ 1533. Direction as to time of service**
>
> On a showing of good cause therefor, the magistrate may, in his discretion, insert a direction in the warrant that it may be served at any time of the day or night; in the absence of such a direction, the warrant may be served only in the daytime. (As amended Stats.1961, c. 1569, p. 3396, § 1.)

> **§ 1533. Direction as to time for search; grounds for search at night**
>
> Upon a showing of good cause, the magistrate may, in his discretion, insert a direction in a search warrant that it may be served at any time of the day or night. In the absence of such a direction, the warrant shall be served only between the hours of 7 o'clock a. m. and 10 o'clock p. m.
> (Amended by Stats.1970, c. 47, p. —, § 1.)

According to the court, section 1533 is inconsistent with section 1529. The legal issue is whether 1529 was amended by implication. If so, then the 9:30 p.m. search was valid (since 1533 allows service up to 10:00 p.m.) and the evidence derived therefrom is admissible in court (if otherwise valid).

(16) The court refers to other statutes to support the conclusion it will reach. Note the interrelationship of the statutory sections. One statute is interpreted by interpreting other statutes. Section 4 of the Penal Code (Pen. Code) says that the sections of the Penal Code are to be interpreted ("construed") rationally and according to common sense ("according to the fair import of their terms"). The Code of Civil Procedure (Code Civ. Proc.) says that when there is a general and a particular section that are inconsistent, the latter is preferred.

The sequence of statutory interrelationship in this case is as follows:

a. Section 1529 of Penal Code says "daytime;"
b. Section 7 of the Penal Code defines daytime as sunrise to sunset.
c. Section 1533 of the Penal Code says 7 a.m. to 10: 00 p.m.
d. Section 4 of Penal Code and Section 1859 of the Code of Civil Procedure provides principles of interpreting statutes that are inconsistent.

(17) In the same way, a court will refer to other cases to support its ruling. In this way, the court argues that the other cases are precedent (see page twelve supra) for the case before the court.

The court in People v. Bruni, therefore, is saying that Dept. of Motor Vehicles of California v. Indus. Acc. Com. and Tidwell v. Superior Court are precedent for its own ruling.

(18) The last part of the opinion lists the reasoning of the court to support its ruling. If there is a general statute and a specific statute that are inconsistent, the court will adopt the interpretation that is consistent with common sense and the purpose of the statutory scheme.

Can you think of why the court would prefer the specific statute over the general? Suppose that on Monday a father says to his son that he wants him to be home "early" this coming Friday night. On Tuesday, the father says "be home at 5 p.m. on Friday." The father has given a general and a specific order as to the same subject-matter. Which of the two orders do you think should be given more weight?

(19) The result of the court's deliberation of the issue must then be weeded out of the opinion. In this opinion, as in most, the result is stated in a number of places. The result is that Section 1529 was impliedly amended to authorize service before 10:00 p.m.

(20) The procedral consequences of the court's resolution of the issue are then stated, usually, as here, toward the very end of the opinion. The judgment of the lower court is reversed. The lower court cannot continue to suppress (i.e., declare inadmissible) the evidence seized at the 9:30 p.m. search.

An appeals court could take a number of positions with respect to a lower court's decision. It could modify it (e.g., reverse it only in part); it could remand the case (i.e., send it back to the lower court) with instructions on how to proceed or how to re-try the case.

(21) In theory a judge must be very precise in defining the issue(s) before him and in resolving only that issue(s). The judge should not say any more than has to be said in order to decide the case. This theory, however, is sometimes not observed. Judges will get off into tangents, give long dissertations or speeches through their opinions. As indicated, this can make the job of the researcher more difficult; he must wade through all the words to get to (1) the precise facts, (2) the precise issues, (3) the precise reasoning and (4) the precise result.

The supreme tangent that a judge can stray into is called dictum. Dictum is a judge's or court's view of what the law is or might be on a state of facts that are not before the court. Judge Smith indicated that the result of the case might be different if the warrant was not specific; e.g., it didn't name the individual to be searched or what the investigator was looking

for. This was not the situation in the Bruni case, therefore his commentary or speculation is dictum.

(22) On any one court there may be several judges. They do not always agree on what should be done in a case. The majority controls. In Bruni, Judge Smith wrote the majority opinion. A concurring opinion is one which votes with the majority but which adds its own views about the case. In Bruni, Judge Jones concurred but specified that he accepted only the result of Judge Smith's opinion. Normally, Judges in such situations will write an opinion indicating their own point of view. Judge Jones did not choose to write an opinion. He simply let it be known that he did not necessarily agree with everything Judge Smith said; all he agreed with was the conclusion, i.e., that the warrant was validly served. It may be that to reach this result Judge Jones would have used different reasoning, relied on different cases as precedent, etc.

(23) A dissenting opinion disagrees in part or in full with the result reached by the majority. Dissenting opinions are sometimes heated. Of course, the dissenter's opinion is not controlling. It is often valuable to read, however, in order to determine what the dissenter thinks that the majority decided.

HAVING STUDIED THE BRUNI CASE IN THIS WAY, THE RESEARCHER SHOULD PREPARE A SEVEN PART BRIEF:

1. *FACTS: A search warrant that said "daytime" service was served at 9:30 p.m. Evidence was obtained during this search. The People (state) attempted to introduce this evidence at trial. Defendant Bruni objected.*

2. *JUDICIAL HISTORY: The trial court dismissed the Information against Bruni after refusing to consider the evidence seized pursuant to an improperly served warrant.*

3. *ISSUE: Is evidence admissible which was obtained pursuant to a daytime warrant but served at 9:30 p.m. when there is an inconsistency in the statutes as to when service must occur?*

   SUB-ISSUE: When Section 1533 of the Penal Code was amended to allow service between 7:00 a.m. and 10:00 p.m., did it impliedly also amend Section 1529 which required daytime service?

4. *RESULT: Section 1529 was impliedly amended to conform to Section 1533. The evidence seized pursuant to the search warrant can be admitted.*

5. *REASONING: Courts will try to reconcile statutes that are inconsistent. If a general statute is inconsistent with a specific statute, the court will adopt the latter whenever possible.*

6. *PROCEDURAL CONSEQUENCES: The trial court's dismissal of the Information is reversed. The trial must resume and the evidence cannot be excluded on the basis of the time of service.*

7. *SUBSEQUENT JUDICIAL HISTORY: As of the date of this brief, there have been no subsequent decisions in this case. (see Chapter Fourteen below on Annotations).*

NOTE THAT THE PARTICULAR STYLE OR FORMATE IN BRIEFING A CASE IS A MATTER OF PERSONAL CHOICE. THE IMPORTANT FACTOR IS TO HAVE ALL THE ELEMENTS OF A BRIEF PRESENTED. THE ORDER OR FORMAT OF THE PRESENTATION IS NOT SIGNIFICANT.

Chapter Eleven

Legal Authority

Authority is support or justification for a result. Authority for the proposition that one convicted for robbery can receive ten years in jail is the state statute on robbery that so provides. The legal researcher is alwsys looking for authority to support the result that he is seeking. Suppose that the problem being researched is whether or not an Ohio corporation can sue a California corporation in Ohio even though the California corporation no longer does any business in Ohio. The Ohio corporation has hired a law firm to advise it on bringing such a suit. The researcher checks statutes, regulations and cases on the point. If he can find an Ohio case involving very similar facts which permitted the bringing of such a suit, then the law of that case may be <u>authority</u> governing the problem being researched. The search for authority always takes place within the context of the following questions: if the problem being researched ever got before a judge, what authority would he <u>have</u> to follow (mandatory authority, and what authority <u>could</u> he follow (persuasive authority) in reaching a result on the problem?

In the Ohio corporation case, the range of authority potentially available to an Ohio court is extensive. A number of possibilities are suggested here:

A. *Constitutions:*
- *the United States Constitution;*
- *the Ohio State Constitution;*
- *the California State Constitution;*
- *the state constitution of one of the other 48 states.*

B. *Statutes:*
- *United States statutes (passed by Congress);*
- *Ohio statutes;*
- *California statutes;*
- *the statutes of one of the other 48 states.*

C. *Ordinances:*
- *of the city or town in Ohio where the corporation used to do business;*
- *of the city or town in California where the corporation currently does business;*
- *of any city or town in the United States.*

D. *Regulations:*
- *of any agency of the Federal government;*
- *of any agency of the Ohio state government;*
- *of any agency of the city or town in Ohio where the corporation used to do business;*
- *of any agency of the California state government;*

of any agency of the city or town in California where the corporation currently does business.

E. Cases:

of the United States Supreme Court
of the United States Circuit Court with jurisdiction over Ohio;
of the United States Circuit Court with jurisdiction over California;
of the United States Circuit Court with jurisdiction over any other area of the country;
of the United States District Court with jurisdiction over the city or town in Ohio where the corporation used to do business;
of the United States District Court with jurisdiction over the city or town in California where the corporation currently does business;
of any other United States District Court;
of the highest state court in Ohio;
of the highest state court in California;
of the highest state court in any other of the 48 states;
of the middle appeals court in Ohio with jurisdiction over the city or town where the corporation used to do business;
of any other middle appeals court in Ohio;
of the middle appeals court in California with jurisdiction over the city or town where the corporation currently does business;
of any other middle appeals court in California;
of any other middle appeals court in any of the other 48 states;
of the Ohio trial court with jurisdiction over the city or town where the corporation used to do business;
of any other Ohio trial court;
of the California trial court with jurisdiction over the city or town where the corporation currently does business;
of any other California trial court;
of any other state trial court in the other 48 states.

F. Decisions:

of any United States administrative agency;
of any Ohio state administrative agency;
of any California state administrative agency;
of state administrative agencies of the other 48 states.

Commentaries: *Encyclopedias;*
Law Reviews;
Hornbooks;
Dictionaries;
Formbooks;
Newspapers;
Manuals.

IT IS CONCEIVABLE THAT IN EVERY ITEM LISTED ABOVE A RESEARCHER COULD FIND SOMETHING THAT DIRECTLY OR INDIRECTLY RELATES TO HIS PROBLEM. WHERE SHOULD HE BEGIN? WHICH OF THE ABOVE ITEMS ARE LIKELY TO BE MORE AUTHORITIVE THAN OTHERS? HOW CAN ALL OF THESE OPTIONS BE CATEGORIZED AND PLACED IN PERSPECTIVE? THE ANSWERS TO THESE QUESTIONS LIE IN THE DISTINCTION AMONG MANDATORY AUTHORITY, PERSUASIVE AUTHORITY AND NON-AUTHORITY.

NON-AUTHORITY

THEORETICALLY, THERE IS A GOOD DEAL THAT COULD BE CONSIDERED AUTHORITY. FOR EXAMPLE, THE UNITED STATES SUPREME COURT HAS THE FINAL SAY ON A GREAT NUMBER OF ISSUES. THIS DOES NOT MEAN THAT EVERYTHING THIS COURT SAYS IS BINDING OR MANDATORY AUTHORITY. BEFORE THE RESEARCHER GETS TO THE QUESTION OF AUTHORITY HE MUST DETERMINE WHETHER THE CASE, STATUTE, REGULATION, COMMENTARY, ETC. IS ON POINT AT ALL; IS IT ANALOGOUS? IS IT DIRECTLY OR INDIRECTLY SAYING ANYTHING ABOUT THE ISSUES BEING RESEARCHED? IF NOT, THEN FOR PURPOSES OF THE PROBLEM, THE DOCUMENT (EVEN A U.S. SUPREME COURT OPINION) IS NO AUTHORITY AT ALL: NON-AUTHORITY. A MURDER CASE IS PROBABLY NON-AUTHORITY FOR A BANKRUPTCY CASE. KEEP IN MIND, THEREFORE, THAT THE DISTINCTION MADE BELOW BETWEEN MANDATORY AND PERSUASIVE AUTHORITY IS IRRELEVANT UNLESS AND UNTIL A THRESHOLD DETERMINATION HAD BEEN MADE THAT DOCUMENT IS OR COULD BE ON POINT.

MANDATORY AUTHORITY

THERE ARE THREE LEGAL SYSTEMS OR GOVERNMENT UNITS:

I. FEDERAL GOVERNMENT
II. STATE GOVERNMENT
III. A LOCAL (CITY, TOWN, COUNTY) GOVERNMENT

EACH UNIT HAS ITS OWN LEGISLATIVE, JUDICIAL AND EXECUTIVE DEPARTMENTS WRITING ITS STATUTES, CASES AND REGULATIONS. EACH UNIT ALSO HAD ITS OWN CONSTITUTION OR CHARTER. EACH OF THESE DOCUMENTS IS MANDATORY AUTHORITY OR IS BINDING ON THE SUBJECTS (I.E., CITIZENS, BUSINESSES, AGENCIES, ETC.) WITHIN EACH UNIT AS INDICATED ON THE CHARTS OF THE FOLLOWING PAGE:

MANDATORY AUTHORITY

	Constitution	Statutes	Cases	Executive Orders	Regulations	Decisions
FEDERAL GOVERNMENT (Every citizen, business or agency in the U.S.)	Matters controlled by the U.S. Constitution	Passed by Congress	U.S. Supreme Court U.S. Circuit Courts Misc. U.S. Courts	President of the U.S.	United States agencies (e.g., HEW)	United States agencies (e.g., HEW)
STATE GOVERNMENT (Every state citizen, business or agency)	Matters controlled by the State Constitution	Passed by State Legislature	Highest State Court Misc. State Courts	Governor	State agencies (e.g., State Welfare Dept.)	State agencies (e.g., State Welfare Dept.)
LOCAL GOVERNMENT (Every local — city, town or county — citizen business or agency)	Matters controlled by the Constitution or charter of the city, town or agency	Ordinance passed by City Council or Board of Supervisors	Misc. Local Courts	Mayor or Local Official	Local agencies (e.g., City Welfare Dept.)	Local agencies (e.g., City Welfare Dept.)

Constitutions

The dictates of the United States Constitution are mandatory on everyone and everything in the United States. (Visiting dignitaries or aliens pose separate problems not dealt with here). It is the supreme law of the land. A state constitution is mandatory only in its own state. A local constitution or charter is mandatory only within the city, town or county it controls. Hence the Ohio state constitution is not mandatory in the state of California. If there is a conflict between what the U.S. Constitution says and what a state or local constitution says, the U.S. Constitution controls. The same is true of any state statute, case, order, regulation or decision and of any local ordinance, case, order, regulation or decision.

Statutes

Federal statutes cover matters of federal or national concern. They are mandatory on everyone or everything under their jurisdiction. They control over any state or local statute, ordinance, case, order or decision that is inconsistent. State statutes cover matters of state concern. They are mandatory on everyone or everything within a state that is under the jurisdiction of the state. They control over any local ordinance, case, order or decision that is inconsistent.

Cases

Cases written by the Federal courts cover matters arising out of the U.S. Constitution and out of U.S. statutes. Their interpretations of the U.S. Constitution and of the U.S. Statutes are mandatory within the geographical area covered by the federal court writing the opinion. The geographical area covered by the U.S. Supreme Court is the entire United States. The geographical area covered by the U.S. Circuit courts is a designated number of states and territories organized into eleven circuits. (See the map on the following page).

The Eleven Federal Judicial Circuits

See 28 U.S.C.A. § 41

THE GEOGRAPHICAL AREA COVERED BY THE U.S. DISTRICT COURTS IS A DESIGNATED AREA WHICH IS SMALLER THAN THAT COVERED BY THE U.S. CIRCUIT COURTS. HENCE, AN OPINION WRITTEN BY ONE U.S. CIRCUIT COURT IS NOT MANDATORY ON ANOTHER U.S. CIRCUIT COURT SINCE THEY ARE IN DIFFERENT GEOGRAPHICAL AREAS. AN OPINION WRITTEN BY A U.S. DISTRICT COURT IS NOT MANDATORY ON ANOTHER U.S. DISTRICT COURT FOR THE SAME REASON.

THERE ARE A NUMBER OF U.S. DISTRICT COURTS WITHIN EACH GEOGRAPHICAL AREA COVERED BY A U.S. CIRCUIT COURT. THE OPINIONS OF A U.S. CIRCUIT COURT ARE MANDATORY ON EACH U.S. DISTRICT COURT WITHIN THE GEOGRAPHICAL AREA COVERED BY THAT U.S. DISTRICT COURT. HENCE, A U.S. DISTRICT COURT WITHIN THE AREA COVERED BY THE U.S. CIRCUIT COURT FOR THE SECOND CIRCUIT DOES NOT HAVE TO FOLLOW AN OPINION WRITTEN BY A U.S. CIRCUIT COURT FOR THE THIRD CIRCUIT.

THE SAME PRINCIPLES APPLY TO STATE COURTS. STATE COURTS PRIMARILY COVER MATTERS ARISING OUT OF THE STATE CONSTITUTION AND OUT OF THE STATE STATUTES. THEIR INTERPRETATIONS OF THE STATE CONSTITUTION AND STATUTES IS MANDATORY WITHIN THE GEOGRAPHICAL AREA COVERED BY THE STATE COURT WRITING THE OPINION. THERE ARE USUALLY THREE LEVELS OF STATE COURTS: SUPREME, APPELLATE (OR MIDDLE APPEALS) AND TRIAL. DIFFERENT STATES MAY HAVE DIFFERENT NAMES FOR EACH LEVEL. THE GEOGRAPHICAL AREA COVERED BY THE STATE SUPREME COURT IS THE ENTIRE STATE. THE GEOGRAPHICAL AREA COVERED BY THE APPELLATE COURTS IN THE STATE IS DESIGNATED SECTIONS OF THE STATE. THE GEOGRAPHICAL AREA COVERED BY THE TRIAL COURTS ARE DESIGNATED SECTIONS WITHIN THE AREAS COVERED BY THE APPELLATE COURTS. HENCE, AN OPINION WRITTEN BY ONE STATE APPELLATE COURT IS NOT MANDATORY ON ANOTHER APPELLATE COURT IN THE SAME STATE BECAUSE THEY ARE IN DIFFERENT GEOGRAPHICAL AREAS. AN OPINION WRITTEN BY A TRIAL COURT IS NOT MANDATORY ON ANY OTHER TRIAL COURT IN THE STATE FOR THE SAME REASON.

THE OPINIONS OF THE STATE SUPREME COURT ARE MANDATORY ON EVERY APPELLATE AND TRIAL COURT IN THE STATE. THE OPINIONS OF A STATE APPELLATE COURT ARE MANDATORY ON EVERY TRIAL COURT WITHIN THE GEOGRAPHICAL AREA COVERED BY THAT APPELLATE COURT.

ARE THE OPINIONS OF FEDERAL COURTS EVER MANDATORY ON STATE COURTS? ARE THE OPINIONS OF STATE COURTS EVER MANDATORY ON FEDERAL COURTS? THE ANSWER DEPENDS ON WHAT SUBJECT MATTER THE OPINION COVERS AND WHAT GEOGRAPHICAL AREA THE COURT WRITING THE OPINION CONTROLS. THE FOLLOWING PRINCIPLES APPLY:

1. WHEN THE UNITED STATES SUPREME COURT IS INTERPRETING THE U.S. CONSTITUTION OR U.S. STATUTES, IT IS MANDATORY ON EVERY STATE AS WELL AS FEDERAL COURT.

2. WHEN A U.S. CIRCUIT COURT IS INTERPRETING THE U.S. CONSTITUTION OR U.S. STATUTES, IT IS MANDATORY ON EVERY STATE COURT THAT COMES WITHIN THE GEOGRAPHICAL AREA COVERED BY THAT U.S. CIRCUIT COURT. (The ~ ~ ~ respect to the ~ ~ ~

BY DEFINITION, DICTUM CAN ONLY BE PERSUASIVE AUTHORITY; IT IS NEVER MANDATORY ON ANYONE.

Chapter Twelve

Analogizing Cases

Constitutional provisions, statutes, regulations, rules of court and executive orders are constantly being interpreted by courts and by quasi-judicial divisions of administrative agencies. Hence, a law library is flooded with court opinions and agency decisions, particularly the former. (Hereinafter the word case will be meant to refer to agency hearing decisions as well as to court opinions). How is the researcher to deal with this body of case law? How is he to determine what cases are applicable to the problem he is researching? The answer is that he employs the principle of analogy. He carefully identifies the facts of the case he is studying (or briefing) and compares them to the facts of his problem. If the facts are exactly the same with only very minor variations, then the facts of the case is said to "be on all fours" with (I.E., the same as) the facts of his problem. Logically, therefore, the researcher can conclude that if the same court had before it the facts of his problem, the court would apply the same ruling, result or law to his problem. If another court had his problem and studied the same case, he could conclude that the court would be inclined to apply the same result. (Of course, whether or not the court would is dependent upon whether the case is mandatory or persuasive authority. See Chapter Eleven above). Suppose that the facts of the case being studied are not "on all fours" with the problem being researched. If they are radically different, then the case is probably worthless, it is non-authority. If they are somewhat different and somewhat the same, then it's unclear whether a court would apply the result of the case to the problem. The principle of analogy is the process whereby two sets of facts are compared to determine if they are sufficiently alike to warrant the conclusion that they should be decided the same way.

Analogy means similarity. Riding a car at 40 miles per hour is analogous to riding in a car at 30 miles per hour. The experience is similar. Is riding in a bus at 40 miles per hour analogous to riding a motorcycle at 40 miles per hour? Clearly there are similarities. Are the differences so substantial that you would conclude that similar conclusions cannot be drawn from both experiences? The extent to which something is analogous to something else is almost always a matter of degree. When someone says, "they are analogous," he is saying that the situations being compared are similar enough to warrant a similar result in both instances.

BUT JUST AS BEAUTY IS IN THE MIND OF THE BEHOLDER, SO IT IS WITH ANALOGIES. IT IS NOT NECESSARILY CYNICAL TO SAY THAT ONE TENDS TO CONCLUDE THAT SITUATIONS ARE ANALOGOUS BASED UPON ONE'S NEED TO FIND ANALOGIES. LEGAL RESEARCHERS HAVE A GREAT NEED TO FIND ANALOGIES.

OUR SYSTEM IS GREATLY DEPENDENT ON THE COMMON LAW. A PRIMARY CHARACTERISTIC OF THE COMMON LAW IS ITS DEPENDENCE ON PRECEDENT. JUDGES ARE NOT INCLINED TO UPSET THE STATUS QUO. THEY SELDOM WANT TO MAKE NEW RULINGS OR NEW LAW. THE CARDINAL RULE IS: FOLLOW A PRECEDENT. ANOTHER REASON FOR THIS IS A PRINCIPLE THAT LIKE CASES SHOULD BE TREATED ALIKE. IF A COURT DECIDED ONE WAY IN THE PAST, IT SHOULD DECIDE THE SAME WAY TODAY IF THE FACTS OF THE TWO CASES ARE SUBSTANTIALLY SIMILAR AND IF THERE ARE NO OTHER REASONS THAT WOULD CAUSE THE COURT TO CHANGE ITS MIND. A THIRD REASON FOR FOLLOWING PRECEDENT IS THAT THE PUBLIC NEEDS SOME GUIDANCE ON WHAT A COURT MIGHT DO IF CERTAIN FACTS CAME TO ITS ATTENTION. IF COURTS KEEP CHANGING THEIR MINDS, THEN HOW ARE PEOPLE TO KNOW HOW TO BEST MANAGE THEIR AFFAIRS SO AS TO MINIMIZE THE POSSIBILITY OF HAVING TROUBLE IN COURT? THE PRIMARY VEHICLE USED BY COURTS TO DETERMINE WHETHER SOMETHING IS PRECEDENT IS THE PRINCIPLE OF ANALOGY.

THERE ARE A NUMBER OF GUIDELINES THAT CAN BE HELPFUL IN ANALOGIZING THE FACTS OF YOUR PROBLEM TO CASES:

1. IN YOUR BRIEF OF THE CASE, BE SURE TO HAVE A COMPLETE STATEMENT OF THE FACTS.

2. IF YOU ARE TRYING TO ARGUE THAT THE LAW OF A CASE SHOULD APPLY TO THE FACTS OF YOUR PROBLEM, YOU IDENTIFY THE FACTS OF THE CASE THAT ARE THE MOST SIMILAR TO THE FACTS OF YOUR CASE AND YOU EMPHASIZE THEM.

3. AS TO THE FACTS OF THE CASE THAT DON'T APPEAR TO BE SIMILAR TO YOURS, YOU EITHER IGNORE THEM, DOWN-PLAY THEM OR POINT OUT THAT THESE FACTS WERE NOT CRUCIAL TO THE COURT'S DECISION.

4. IF YOU WANT TO ARGUE THAT THE LAW OF A CASE DOES <u>NOT</u> APPLY TO THE FACTS OF YOUR PROBLEM, THEN ARGUE THE OPPOSITE FROM POINTS 2 AND 3 ABOVE.

5. NORMALLY, THE MORE FACTS THERE ARE IN A CASE, THE MORE DIFFICULT IT IS TO ANALOGIZE THE CASE TO OTHER SITUATIONS. EVERY FACT PARTICULARIZES THE CASE. CASES THAT RUN ON AND ON WITH PAGES OF FACTS ARE SEEMINGLY IMPOSSIBLE TO ANALOGIZE. TO ANALOGIZE SUCH A CASE, THE RESEARCHER MUST TRY TO ARGUE THAT THERE ARE SEVERAL KEY FACTS IN THE CASE WHICH TOWER ABOVE ALL THE OTHERS, AND THAT THESE KEY FACTS, VERY SELECTIVELY IDENTIFIED OF COURSE, ARE ANALOGOUS TO THE FACTS OF THE PROBLEM.

6. IT IS SOMETIMES DIFFICULT TO DETERMINE WHICH FACTS THE COURT CONSIDERED TO BE KEY OR CRUCIAL TO ITS OPINION. SELDOM IS THE COURT SO HELPFUL AS TO SAY, "THE FACT THAT CONVINCES ME THAT THE RESULT SHOULD BE . . . IS . . ." WITHOUT SUCH GUIDANCE, THE RESEARCHER MUST ASSESS HOW MUCH EMPHASIS THE COURT GAVE TO CERTAIN FACTS. WERE THEY REPEATED SEVERAL TIMES IN THE OPINION, ETC.? SOMETIMES THE RESEARCHER WILL FIND STATEMENTS IN THE OPINION SUCH AS "TAKING ALL THE FACTS AND CIRCUMSTANCES INTO CONSIDERATION, OUR RULING IS . . ." OR, "THE SUM TOTAL OF THESE FACTS LEADS US TO CONCLUDE . . ." SUCH STATEMENTS ARE INDICATIONS THAT THE COURT IS BEING VERY NARROW IN ITS RULING. IT MAY BE SAYING THAT NO ONE FACT OR SET OF FACTS IS CRITICAL, AND THAT IT IS ONLY THE COMPOSITE OF THE FACTS THAT CONVINCES IT TO ROLE IN A CERTAIN WAY. IN SUCH CASES, THE ELIMINATION OF ANY ONE FACT MAY HAVE CAUSED THE COURT TO RULE DIFFERENTLY. THESE CASES, OF COURSE, ARE VERY DIFFICULT TO ANALOGIZE SINCE IT IS ALMOST IMPOSSIBLE FOR ALL OF YOUR FACTS TO BE SIMILAR TO ALL OF THE FACTS OF THE CASE BEING STUDIED.

7. A DOUBLE ANALOGY IS ALWAYS HELPFUL. SUPPOSE THAT WITH THE FACTS OF YOUR PROBLEM BEFORE YOU, YOU COME ACROSS CASE "X" AND YOU WANT TO SAY THAT THIS CASE APPLIES TO YOUR PROBLEM BECAUSE THE FACTS ARE ANALOGOUS. YOU HAPPEN TO FIND CASE "Y" THAT RULED ON A SET OF FACTS THAT WERE SIMILAR TO YOURS. CASE "Y" SAID THAT CASE "X" WAS ANALOGOUS TO ITS CASE. HENCE, YOU CAN ARGUE THAT ANOTHER REASON WHY CASE "X" IS ANALOGOUS TO YOUR PROBLEM IS THAT CASE "Y" HAD A SET OF FACTS SIMILAR TO YOUR PROBLEM AND CASE "Y" SAID THAT CASE "X" WAS ANALOGOUS TO ITS CASE.

8. ALTHOUGH THE FACTS OF YOUR PROBLEM MAY NOT BE READILY ANALOGOUS OR "ON ALL FOURS" WITH A CASE, YOU CAN ARGUE THAT THE FACTS OF THE CASE ARE SUCH THAT THE RATIONALE BEHIND THE COURT'S GOING THE WAY IT DID APPLIES TO YOUR PROBLEM. THE REASONING THAT THE COURT PROVIDED IN THE CASE "AS A MATTER OF COMMON SENSE AND JUSTICE" APPLIES TO THE FACTS OF YOUR PROBLEM.

LET'S LOOK AT A HYPOTHETICAL COURT CASE AND SEE HOW A RESEARCHER MIGHT TRY TO ANALOGIZE IT TO THE FACTS OF HIS PROBLEM. FOLLOWING THIS ANALYSIS, THERE ARE TWO EXERCISES IN WHICH THE SAME KIND OF REASONING WILL BE NEEDED.

YOUR FACTS	*THE CASE: A v. B*
Client sees an ad in the paper announcing a sale. He goes to the back of the store and falls into a pit. There was a small sign that said "danger" near the pit. The client wants to sue the store owner for negligence. The law office assigns a paralegal to research the case. The researcher finds the case of A v. B and wants to argue that it is analogous.	*"A" is looking for an address. He is walking down the street. He decides to walk into an office building to ask someone for help. While walking down the corridor, he slips and falls on a wet floor. There was a small sign in the corridor that said "Wet Floors" which "A" did not see. "A" sues the owner of the building ("B") for negligence. The court held that the owner was negligent.*

THE RESEARCHER FIRST READS THE CASE OF A v. B THOROUGHLY TO GET ALL THE FACTS. HIS ARGUMENTS RUN THUSLY: BOTH HIS CLIENT AND "A" WERE IN A PUBLIC FACILITY AT THE TIME. THE DANGER OF THE WET FLOOR IS SIMILAR TO THE DANGER OF THE PIT. IN FACT, THE PIT IS MORE DANGEROUS. THE "WET FLOORS" SIGN IN A v. B WAS INCONSPICOUS AS WAS THE "DANGER" SIGN NEAR THE PIT. THEREFORE, IF THE A v. B COURT HAD THE FACTS OF THE CLIENT BEFORE IT, IT WOULD HAVE DECIDED THE CASE IN THE SAME WAY, I.E., IT WOULD HAVE FOUND THE STORE OWNER NEGLIGENT.

SUPPOSE THAT YOUR OFFICE REPRESENTED THE STORE OWNER IN THE PIT PROBLEM. YOU ARE ASKED TO RESEARCH THE PROBLEM. YOU COME ACROSS A v. B. YOUR JOB IS TO ARGUE THAT IT DOES NOT APPLY, I.E., THAT IT IS NOT ANALOGOUS. YOU FIRST ARGUE THAT WET FLOORS ARE MORE DANGEROUS THAN PITS. WET FLOORS ARE USUALLY AT THE VERY FRONT OF THE BUILDING WHERE EVERYONE WILL COME INTO CONTACT WITH THEM. THIS IS VERY DIFFERENT FROM PITS AT THE BACK OF A STORE WHERE FEW PEOPLE ARE LIKELY TO GO. YOU ARGUE THAT THE "DANGER" SIGN IS MUCH MORE LIKELY TO CATCH THE EYE OF SOMEONE THAN A WET FLOOR SIGN. FURTHERMORE, THE "DANGER" SIGN WAS NEAR THE PIT, WHEREAS THE "WET FLOORS" SIGN IN A v. B WAS SMALL AND NOT AS PROMINENT. THEREFORE, A v. B DOES NOT APPLY, I.E., IT IS NOT ANALOGOUS.

PROBLEMS

1. YOUR FACTS: CLIENT HAS APPLIED FOR A DRIVER'S LICENSE. IT WAS DENIED UNDER A DEPARTMENT REGULATION WHICH STATES THAT NO LICENSE SHALL BE ISSUED TO PEOPLE OF "UNFIT CHARACTER." THE CLIENT SERVED FIVE YEARS FOR BURGLARY AND WAS RECENTLY RELEASED.

   THE CASE: PLAINTIFF WAS DENIED A BARBER'S LICENSE UNDER A REGULATION THAT SAID THAT THE AGENCY HAS THE DISCRETION TO ISSUE LICENSES ONLY TO APPLICANTS THAT ARE "NOT MORALLY UNWORTHY." THE PLAINTIFF HAD SPENT SIX MONTHS IN A MENTAL INSTITUTION. THE COURT HELD THAT THE AGENCY WAS WRONG IN DENYING THE PLAINTIFF THE LICENSE. FIRST, ARGUE THAT THIS CASE IS ANALOGOUS TO YOUR FACTS. SECOND, ARGUE THAT THE CASE IS NOT ANALOGOUS.

2. YOUR FACTS: CLIENT WANTS TO SUE A MERCHANT FOR A BREACH OF WARRANTY. THE CLIENT PURCHASED A REFRIGERATOR. THE DEALER TOLD HER THAT IT WAS "THE BEST DAMN MACHINE IN THE CITY." WHEN THE CLIENT GOT THE REFRIGERATOR HOME IT WORKED, BUT SHE WAS NOT TOTALLY SATISFIED WITH

IT. A NEIGHBOR OF THE CLIENT BOUGHT A REFRIGERATOR FOR ABOUT THE SAME PRICE AND IT WORKED MUCH BETTER. THE NEIGHBOR BOUGHT IT IN THE SAME CITY. THE CLIENT IS CLAIMING THAT SHE WAS GIVEN A WARRANTY BY THE DEALER THAT THE MACHINE WAS THE BEST ONE IN THE CITY, BUT DUE TO THE COMPARISON SHE MADE BETWEEN HER'S AND HER NEIGHBOR'S, IT WASN'T. THE DEALER ARGUES THAT IT WAS NOT A WARRANTY. HE WAS MERELY "PUFFING" OR GIVING SALES TALK WHICH EVERYONE KNOWS IS NOT A WARRANTY.

THE CASE: PLAINTIFF SUED A USED CAR DEALER. THE DEALER TOLD THE PLAINTIFF THAT "THIS CAR IS IN GOOD SHAPE." TWO DAYS AFTER THE PLAINTIFF PURCHASED THE CAR, IT BROKE DOWN. PLAINTIFF SUED THE DEALER FOR A BREACH OF WARRANTY. THE DEFENSE OF THE DEALER WAS THAT HIS LANGUAGE ON THE SHAPE OF THE CAR WAS PUFFING. HELD: THE DEALER HAD GIVEN THE PLAINTIFF A WARRANTY AND BREACHED IT. FIRST, ARGUE THAT THIS CASE IS ANALOGOUS TO YOUR FACTS. SECOND, ARGUE THAT IT IS NOT ANALOGOUS.

Chapter Thirteen

Using a Table of Contents and an Index

One of the most important techniques for the researcher to master is the use of the table of contents at the beginning of law books and the index at the end of them. Unfortunately, both the table and the index are usually inadequate. One does not often find them to be comprehensive. Nevertheless, they can be of great help.

A few general guidelines on the use of tables of contents and indexes is in order:

1. If you can't find what you are looking for in the index, try the table of contents, and vice versa.

2. Nine times out of ten, if you can't find what you are looking for, you should assume that it is there and that to find it you must be more imaginative in trying to locate it.

3. Before you begin, think of the major category into which your legal question falls. Look up that category in the table and index.

Suppose that your facts are as follows: X company wants to register with the Securities and Exchange Commission; ten years ago the company was convicted of fraud. The major categories that might be checked on these facts are "Securities and Exchange Commission," "Stocks," "Criminal Law," etc.

4. Think of the subcategories of your major categories and try them out.

A subcategory of "Securities and Exchange Commission" in the problem listed above might be "Registration," or "Application," or "Criminal Conduct," etc. A subcategory of "Stocks" might be "Registration," "Application." A subcategory of "Criminal Law" might be "Stock Fraud," "Securities Fraud," etc.

5. Generalize the word you are looking up; think of the broader categories into which it falls. Look up these broader categories.

Suppose the word you are checking is "whiplash." You are having difficulty finding it in any table of contents or index. Generalize the word into a broader context, e.g., "automobile accidents," "torts," "injuries," etc.

6. Think of as many different ways that the word you are checking can be expressed and check them out.

SOME OTHER WORDS FOR "MALICIOUS" ARE: "EVIL," "BAD FAITH" "DECEPTIVE," ETC.

7. TAKE SOME STABS IN THE DARK EVEN IF AT FIRST GLANCE LOGIC WOULD NOT RECOMMEND IT.

EXAMINE THE FOLLOWING TABLE OF CONTENTS FROM CORPUS JURIS SECUNDUM, A LEGAL ENCYCLOPEDIA. IT DEALS WITH THE POLICE POWER OF A STATE, COVERING ACTIVITY OF THE STATE PERTAINING TO THE HEALTH AND SAFETY OF ITS CITIZENS. WHICH OF THE SECTIONS OF THIS TABLE OF CONTENTS WOULD YOU CHECK TO FIND MATERIAL ON THE FOLLOWING PROBLEMS:

1. *Can an off-duty highway patrol officer arrest a citizen?*
2. *Can the state own and operate a liquor store?*
3. *Does a citizen have to be finger-printed by the police?*
4. *Can the state regulate correspondence schools?*

V. POLICE POWER—p 889

§ 174. Definition and distinctions—p 889
175. Nature and scope in general—p 891
176. Who may exercise—p 906
177. —— State or federal government—p 906
178. —— Delegation—p 909
179. —— Alienation, surrender, or abridgment of power—p 913
180. Mode of exercising power—p 915
181. Subjects of police power—p 917
182. —— General welfare—p 917
183. —— Public health—p 919
184. —— Public safety—p 921
185. —— Public order—p 922
186. —— Public morals—p 923
187. —— Prevention of fraud—p 924
188. —— Business and occupations in general—p 925
189. —— Occupations—p 935
190. —— Persons—p 936
191. —— Places and things—p 936
192. —— Amusement and recreation—p 937
193. —— Public work—p 937
194. —— Other subjects of regulation—p 937
195. Limitations on police power—p 938
196. —— Subordination to constitution—p 946
197. —— Private rights—p 951
198. —— Functions of legislature and judiciary—p 951

AN EXCELLENT WAY TO BECOME FAMILIAR WITH THE USAGE OF TABLES AND INDEXES WOULD BE TO DRAFT ONE OR TWO OF THEM YOURSELF. DRAFT AN INDEX FOR THE FOLLOWING TOPICS. BE AS COMPREHENSIVE AS YOU CAN. ORGANIZE THE LIST ALPHABETICALLY. FOR EVERY ONE ITEM THAT YOU ARE INDEXING, YOU SHOULD HAVE MORE THAN ONE HEADING IN THE INDEX.

1. *Index the last job that you had. Cover every aspect of it that you can think of.*
2. *Suppose that you were going to write a book on cooking or swimming. Draft an index to your book.*

3. *Suppose that you were going to write a book on how parents can deal with teenage children. Draft an index to your book.*
4. *Pick one area of the law that you have thus far covered in class or read about. Index this area.*

THE SECTION THAT FOLLOWS ALSO COMES FROM CORPUS JURIS SECUNDUM. IT IS FROM THE INDEX PORTION OF ONE OF THE VOLUMES. UNDER WHICH HEADING WOULD YOU LOOK TO FIND INFORMATION ON THE FOLLOWING TOPICS/ PROBLEMS:

1. *You want to introduce a death certificate into evidence.*
2. *You want to introduce into evidence the last words of the decedent.*
3. *You want to introduce into evidence the character of the decedent.*

Death,
- **Autopsy, generally, ante**
- **Best evidence rule, § 803, p. 136**
- **Book entries,**
  - **Entrant, proof of handwriting, § 693, p. 942**
  - **Supplemental testimony respecting entries by clerks and third persons, § 693, p. 939**
  - **Supporting entries by deceased persons by oath of personal representative, § 684, p. 910**
- **Clerk or employee making book entries, § 602**
- **Copy of record, certification by state registrar, § 664, p. 865, n. 69**
- **Declaration against interest, death of declarant, § 218, p. 604**
- **Declarations, § 227, p. 624**
  - **Death of declarant as essential to admission, § 230**
- **Dying declarations, generally, post**
- **Experiments, object or purpose, § 588(1)**
- **Former evidence, death of witness, § 392**
- **General reputation, § 1048**
- **Hearsay, § 227, p. 624**
  - **Death certificates, § 194, pp. 561, 562; § 766, p. 66**
  - **Death of declarant, § 206**
  - **Impossibility of obtaining other evidence, § 204**
- **Letters, § 703, p. 976**
- **Maps and diagrams of scenes of occurrence, § 730(1), p. 1045**
- **Memorandum, § 696, p. 955**
- **Mortality tables, generally, post**
- **Newspaper announcement, § 227, p. 625**
- **Opinion evidence,**
  - **Animals, § 546(68)**
  - **Cause and effect, § 546(11), p. 129**
  - **Effect on human body, § 546(97), p. 374**
  - **Fixing time, § 546(91), n. 16**
- **Owners, admissions, § 327**
  - **Personal property, § 334**
  - **Parol or extrinsic evidence, rule excluding, action to recover for, § 861, p. 230**
  - **Photographs, personal appearance or identity, § 710**
  - **Presumptions, ancient original public records, official making, § 746, p. 37**
  - **Prima facie evidence, record of, § 644**
  - **Private documents, recitals, § 677**
  - **Public records and documents, registers of, § 623**
  - **Reputation, § 227, p. 626**
  - **Res gestae, statements, § 410, p. 991**
  - **Rumor, § 227, p. 625**
  - **Self-serving declarations, effect of death of declarant, § 216, p. 591**
  - **Services, value, opinion evidence in death action, § 546(124), p. 489, n. 96**
  - **Statements, weight of evidence, § 208**
  - **Value of service rendered by claimant, opinion evidence, § 546(125), p. 493, n. 41**
  - **Witness, unsworn statements, circumstances tending to disparage testimony, § 268**
  - **Wrongful death,**
    - **Admissions, husband and wife, § 363**
    - **Admissions of decedent, privity, § 322, n. 96.5**
    - **Declarations against interest, § 218, p. 607**
    - **Loss of life, value, opinion evidence, § 546 (121), p. 473, n. 54**
    - **Municipal claim, evidence of registry, § 680, n. 21**
    - **Value of decedent's services, opinion evidence, § 546(124), p. 489, n. 96**

Death certificates,
- Certified copies, § 651, p. 851
  - Officer as making, § 664, p. 865, n. 69
  - Prima facie evidence, § 773
- Church register, competency, § 727
- Conclusiveness, § 766, p. 64
- Expert testimony, supporting opinion, § 570
- Foreign countries, authenticated copies, § 675, p. 885
- Hearsay, § 194, pp. 561, 562; § 766, p. 66
- Kinship, § 696, p. 949, n. 2
- Official document, § 638, pp. 823, 824
- Prima facie case or evidence,

FINALLY, EXAMINE THE FOLLOWING EXCERPT FROM THE INDEX TO A VOLUME OF A STATE STATUTORY CODE. UNDER WHICH HEADINGS WOULD YOU LOOK TO FIND STATUTES ON THE FOLLOWING:

1. *You want to know if New York has the death penalty.*
2. *Can inmates receive physical punishment?*
3. *What sentences can minors receive?*
4. *Are women inmates treated the same as men?*
5. *What happens when an inmate receives the wrong sentence?*

SENTENCE AND PUNISHMENT

Applicability of provisions to sentence imposed under revised Penal Law, § 800.
Capital punishment. Death, generally, post.
Certification by local officials of cost of care of paroled prisoners transferred to county or city jails, § 216.
Clemency. Executive Clemency, generally, this index.
Commutation of sentence, generally, this index.
Conditional Release, generally, this index.
Credit, jail term credit, certification of, § 805.
Crime or offense committed on parole, compulsion to serve maximum term of sentence on which released, § 210.
Death,
  Electrical apparatus to inflict, correction commissioner to provide, § 112.
  Imprisonment of one sentenced to, § 130.
  Visit to prison, § 146.
Discharge from parole prior to expiration of maximum term, § 220.
Erroneous sentence, return of persons for resentence, § 601-a.
Executive Clemency, generally, this index.
Expenses, maintaining person convicted of felony and sentenced to imprisonment, reimbursement, § 601-c.
First offenders, certificate of relief from disabilities, grounds, § 702.
Good behavior allowances,
  Definite sentence, § 804.
  Indeterminate sentence, § 803.
Interrupted sentences, declaration of delinquency by parole board, § 213.
Juvenile delinquents, commitment to reception center, § 61.
Male offenders between 16 and 21,
  Commitment to reception center, § 61.
  Power of court not restricted, § 64.
Penitentiary prisoners, § 483.
Prison punishment, § 139.
Prisoner confined for less than life, application for appointment of trustee of property of, copy of sentence to be presented with petition, § 354.
Reduction of sentence. Commutation of Sentence, generally, this index.
Reformatories, § 288.
  Erroneous sentence, § 289.
Release. Conditional Release, generally, this index.
Resentence,
  Person sentenced to certain over-crowded reformatories, § 278.
  Return of persons erroneously sentenced for, § 601-a.
Return of persons erroneously sentenced for resentence, § 601-a.
Revised Penal Law, sentences imposed under, § 800 et seq.
  Applicability, § 800.
  Commitments to county or regional correctional institutions, § 802.
  Commitments to custody of correction department, § 801.
  Good behavior allowances against,
    Definite sentences, § 804.
    Indeterminate sentences, § 803.
  Parole and conditional release under indeterminate and reformatory sentences, § 805.
Specification in order of commitment of institution in which sentence to be served, § 802.
Suspension of sentence, first offenders,
  Certificate of relief from disabilities issued by courts, § 702.
  Guilty plea, etc., treatment, discretionary relief, § 700.
Termination where discharge from parole granted, § 220.
Time spent in custody, credit, certification, § 805.
Wardens, neglect of duty, § 126.
  United States prisoners, § 145.
Workhouses, § 500-i.

For references to other Consolidated Laws, see General Index

Chapter Fourteen

Annotations

An annotation is designed to give the researcher basic information on a law, E.G., statute, case, regulation. The annotation can provide a variety of data: Where did it come from? What has happened to it since it became effective? What does it mean? How does it fit into the larger perspective of the law?

The need for annotated material is fundamental, not only because the law changes so rapidly, but also because any one component of the law can be, and most often is, intimately related to other components of the law. There is some wisdom in the researcher's making the following assumptions about every constitutional provision, statute, case, regulation or decision that he reads:

1. *As it stands, it is no longer effective; subsequent changes or developments in the law have given it a different context and perspective.*

2. *It cannot be fully understood in a vacuum; surrounding law in the area must be grasped even if no changes or new developments have occurred.*

These assumptions, of course, are extreme. There will be instances when the researcher CAN take what he is reading at face value. Until he has become experienced in research, however, it is recommended that he subscribe to both assumptions. They will help him to develop the necessary discipline to deal with large and complex volumes of materials. He needs to be skeptical enough to distrust the validity of what he is reading until he has gone through a set of regularized steps calculated to assure as much validity as is humanly possible without destroying the self-confidence needed to cope with the material at all.

Our approach in this section will be to explore generally the prior history and the subsequent history of any law (particularly the latter), and to leave for the final sections of this text the process of annotating specific kinds of law.

Prior History

The researcher is interested in the prior history of a law (where did it come from?) not for academic or historical purposes,

BUT FOR THE VERY PRACTICAL PURPOSE OF DETERMINING WHETHER PRIOR HISTORY SHEDS ANY LIGHT ON THE CURRENT MEANING OF THE LAW. FURTHERMORE, THE RESEARCHER SHOULD BE CONCERNED NOT SIMPLY WITH WHAT THE LAW SAYS, BUT ALSO WITH THE UNDERLYING OBJECTIVE THAT THE LAW IS TRYING TO GET AT, THE PROBLEM OR EVIL THAT IT IS TRYING TO CORRECT. IT IS NOT ALWAYS CLEAR FROM THE FACE OF THE LAW WHAT THIS OBJECTIVE IS. KNOWING WHERE THE LAW CAME FROM CAN BE INSTRUCTIVE TO THIS END. SUPPOSE, FOR EXAMPLE, THAT THE RESEARCHER IS READING A STATUTE THAT MAKES IT A MISDEMEANOR FOR THE OWNER OF A BUILDING TO HAVE ANY PAINT ON THE WALLS WITH A DESIGNATED PERCENTAGE OF LEAD. SUPPOSE FURTHER THAT THE PLACING OF THIS ACT IN THE PENAL CODE, SO THAT IS A CRIME, IS A RELATIVELY RECENT OCCURRENCE, AND THAT IN THE PAST, THE ONLY WAY THAT A TENANT COULD COMPLAIN WAS THROUGH THE CIVIL CODE BY BRINGING A SUIT. THE RESEARCHER SHOULD BE AWARE OF THIS FOR THE FOLLOWING POSSIBLE REASONS:

1. MAKING IT A CRIME MAY BE AN INDICATION OF AN INTENT OF OF THE LEGISLATURE TO "CRACK DOWN" ON THE PROBLEM, HAVING CONCLUDED THAT THE CIVIL PROCESS WAS INEFFECTIVE. THIS IS A SIGNAL TO THE RESEARCHER TO EMPHASIZE TO A COURT THAT THE STATUTE SHOULD BE VIGOROUSLY ENFORCED AND LIBERALLY CONSTRUED IN FAVOR OF TENANTS.

2. THERE MAY HAVE BEEN A NUMBER OF CASES DECIDED UNDER THE LEAD POISONING STATUTE OF THE CIVIL CODE WHICH MAY OR MAY NOT HELP THE RESEARCHER INTERPRET THE LEAD POISONING STATUTE OF THE PENAL CODE.

THE RESEARCHER WILL NOT BE AWARE OF SUCH OPTIONS UNLESS HE WAS CONSCIOUS OF THE CONTEXT OF PRIOR ATTEMPTS TO DEAL WITH THE PROBLEM.

AT ONE EXTREME, A CASE MAY HAVE BEEN OVERRULED AND A STATUTE OR REGULATION MAY HAVE BEEN DECLARED VOID BY A COURT OR COMPLETELY REVISED BY THE LEGISLATURE OR AGENCY IN QUESTION. IT IS USUALLY VERY HELPFUL TO KNOW WHETHER THIS HAS HAPPENED, PARTICULARLY IF THE CHANGE HAS OCCURRED WITHIN THE LAST TEN YEARS. IT MAY SIGNAL A NEW DIRECTION THAT THE COURT, LEGISLATURE OR AGENCY IS TAKING WHICH MAY NOT BE EVIDENT SIMPLY BY LOOKING AT THE LAW IN ISOLATION. KNOWING, OR "SENSING" THIS DIRECTION IS IMPORTANT BECAUSE THE ULTIMATE QUESTION OF A RESEARCHER IS: WHAT MIGHT A COURT DO IF IT HAD BEFORE IT THE FACTS OF HIS PROBLEM? THE NAME OF THE GAME IS SPECULATION AND THE RESEARCHER'S HAND IN FORESEEING THE FUTURE CAN BE STRENGTHENED IF HE IS ALERTED TO THE POSSIBILITY THAT DRASTIC CHANGES IN THE LAW ARE GOOD INDICATIONS OF NEW POLICY AND DIRECTION. LESS DRASTIC CHANGES IN THE LAW, OF COURSE, ARE LESS LIKELY TO INDICATE SUCH DEVELOPMENT.

SUPPOSE ON THE OTHER HAND, THAT THERE HAS BEEN LITTLE OR NO PRIOR HISTORY TO A GIVEN LAW OR BODY OF LAW. THE AREA OF ENVIRON-

MENTAL LAW IS SUCH A PHENOMENON. SOMEWHAT SUDDENLY, A LEGISLATURE PRODUCES A CODE OF ENVIRONMENTAL LAW GOVERNING POLLUTION STANDARDS, LAND CONSERVATION REMEDIES, ETC. THERE MAY BE LITTLE PRIOR LAW FOR THE RESEARCHER TO GO TO PLACE THIS AREA IN CONTEXT. BEFORE THIS CODE WAS PASSED, HOWEVER, THERE WERE PROBABLY LEGISLATIVE HEARINGS CONDUCTED AND A VARIETY OF BILLS DRAFTED ON THE SUBJECT. HAVING SOME IDEA OF THIS BACKGROUND MAY BE VERY HELPFUL IN DETERMINING WHAT THE LEGISLATURE HAD IN MIND WHEN IT PASSED THE ENVIRONMENTAL CODE.

TO BE SURE, A RESEARCHER CAN SPEND WEEKS STUDYING PRIOR HISTORY. THIS IS RARELY NECESSARY UNLESS THE LITIGATION UNDER WAY OR CONTEMPLATED (FOR WHICH THE RESEARCHER IS DOING LEGAL RESEARCH) IS NARROW ENOUGH TO NECESSITATE A SCRUPULOUS REGARD FOR HISTORICAL ANTECEDENTS. NORMALLY, THE RESEARCHER NEED NOT SPEND A LOT OF TIME FAMILIARIZING HIMSELF WITH BACKGROUND INFORMATION ON A PARTICULAR LAW. DOING THIS, HE WILL HAVE REALIZED A NUMBER OF OBJECTIVES. FIRST, HE WILL GET THE OVERVIEW WHICH WILL HELP HIM TO BETTER UNDERSTAND THE LAW HE IS STUDYING. SECOND, HE MAY COME ACROSS NEW LEADS AND NEW OPTIONS IN RESOLVING THE PROBLEM WHICH MATERIALIZED SOLELY BECAUSE HE WAS CONCERNED ENOUGH ABOUT THE LARGER PICTURE TO INQUIRE ABOUT IT.

HOW THEN CAN THE RESEARCHER GAIN THIS OVERVIEW QUICKLY AND ACCURATELY?

1. HE COULD ASK AN EXPERIENCED ATTORNEY OR PARALEGAL TO GIVE HIM SOME IDEA OF WHAT THE LAW IS ALL ABOUT.

2. WHEN REGULATIONS ARE INVOLVED, HE COULD MAKE A PHONE CALL TO SOMEONE AT THE AGENCY WHERE THE REGULATIONS WERE WRITTEN AND MAKE SOME GENERAL INQUIRIES CONCERNING THE REGULATIONS. THE AGENCY MAY HAVE A PAMPHLET AVAILABLE TO THE PUBLIC COVERING GENERAL POLICY OR GOALS.

3. WHEN STATUTES ARE INVOLVED, HE SHOULD READ ANY OF THE HISTORICAL NOTES THAT SOMETIMES FOLLOW THE STATUTORY SECTION IN CODIFIED EDITIONS OF STATUTES.

4. HE COULD PICK UP A LAW REVIEW ARTICLE, A FORMBOOK, A HORNBOOK OR SOME OTHER COMMENTARY AND READ WHAT IS SAID BY THE AUTHOR ON THE BACKGROUND OF THE LAW.

SUBSEQUENT HISTORY

THERE ARE THREE PRIMARY VEHICLES FOR DETERMINING THE SUBSEQUENT HISTORY OF A LAW:

1. *Supplemental materials*
2. *Citators*
3. *The keynote system of the West Publishing Company*

THE RESEARCHER MUST BE AWARE OF SUBSEQUENT HISTORY NOT ONLY BECAUSE IT IS ESSENTIAL FOR HIM TO KNOW WHETHER THE LAW IS STILL IN EFFECT, BUT ALSO TO DETERMINE WHETHER HIS ATTEMPT TO INTERPRET THE MEANING OF A LAW IS ASSISTED BY DETERMINING HOW OTHERS HAVE INTERPRETED THE LAW.

1. SUPPLEMENTAL MATERIALS

A VOLUME OF STATUTES OR REGULATIONS MAY HAVE BEEN REVISED EITHER SUBSTANTIVELY IN TERMS OF CHANGES IN THE LAW ITSELF, ORGANIZATIONALLY IN TERMS OF HOW THE LAW IS PIECED TOGETHER OR BOTH SUBSTANTIVELY AND ORGANIZATIONALLY. THE PRIMARY WAY TO FIND THIS OUT IS TO DETERMINE WHETHER A REPLACEMENT VOLUME HAS BEEN PUBLISHED, OR INDEED WHETHER THE ENTIRE SET OF VOLUMES HAS BEEN REPLACED BY A NEW SET. UNFORTUNATELY, MANY LAW LIBRARIES ARE NOT ABLE TO PURCHASE REVISED EDITIONS BECAUSE OF THE SUBSTANTIAL COST INVOLVED IN KEEPING UP TO DATE. IT IS OF PARAMOUNT IMPORTANCE FOR THE RESEARCHER TO DETERMINE HOW CURRENT THE VOLUMES AVAILABLE TO HIM ARE. OFTEN THE ONLY WAY HE CAN DO THIS IS BY ASKING QUESTIONS OF THOSE MORE FAMILIAR WITH THE FIELD THAN HE, KEEPING UP TO DATE IN THE FIELD GENERALLY AND LOOKING FOR LEADS IN OTHER TEXTS INDICATING THAT MAJOR REVISIONS HAVE BEEN MADE. THE RESEARCHER SIMPLY CANNOT FUNCTION WITHOUT THE LATEST EDITIONS OF MATERIALS. HIS ONLY ALTERNATIVE MAY BE TO JOURNEY TO OTHER LAW LIBRARIES, E.G., THE LOCAL BAR ASSOCIATION OR A LOCAL LAW SCHOOL, WHICH HAVE MORE CURRENT MATERIALS.

THE MOST FREQUENTLY USED FORM OF SUPPLEMENTAL MATERIAL IS THE POCKET-PART IN ALMOST EVERY LAW BOOK EXCEPT UNCODIFIED STATUTES AND REGULATIONS, CASE REPORTERS AND LOOSE-LEAF TEXTS (SEE CHAPTERS THREE AND FIVE SUPRA). THE POCKET-PARTS ARE PUBLISHED PERIODICALLY AND ARE INSERTED IN THE REAR INSIDE COVER OF THE BOOK. AS NEW POCKET-PART SECTIONS ARE PRINTED, THE OLD ONE IS THROWN AWAY. THEY SHOULD CONTAIN THE MOST RECENT DEVELOPMENTS SINCE THE MAIN BODY OF THE BOOK WAS PRINTED. THE POCKET-PART IS ORGANIZED IN THE SAME WAY THAT THE MAIN BODY OF THE TEXT IS ORGANIZED. IF THE BODY IS ORGANIZED INTO TITLES, CHAPTERS, SUBCHAPTERS AND SECTIONS THIS WILL BE THE ORGANIZATION OF THE POCKET-PART.

POCKET-PARTS ARE ALWAYS CONSULTED. IF THE RESEARCHER IS STUDYING SECTION 714 OF THE PENAL CODE IN THE MAIN BODY OF THE TEXT, HIS STEPS ARE AS FOLLOWS:

a. read section 714 in the main text;
b. read the historical note in the main text;
c. determine whether any of the cross-references after the statute in the main body of the text should be pursued;
d. read the headnotes of decisions (or selected headnotes) that follow the statute in the main text;
e. go to the pocket-part, find section 714 and repeat the above four steps to the extent that there is anything printed under section 714.

IF NOTHING IS FOUND UNDER SECTION 714 IN THE POCKET-PART, THEN THE RESEARCHER CAN CONCLUDE THAT AS OF THE DATE WHEN THE POCKET-PART WAS PRINTED, NO NEW DEVELOPMENTS IN SECTION 714 HAVE OCCURRED. WHAT IS SAID ABOUT 714 IN THE MAIN BODY OF THE TEXT CAN BE ASSUMED TO BE COMPREHENSIVE. (NOTE THAT SOME RESEARCHERS START WITH STEP "E" ABOVE; THEY WANT TO KNOW IMMEDIATELY WHETHER THE SECTION HAS BEEN CHANGED OR WHETHER THERE ARE NEW CASES ON THE SECTION. HENCE THEY START WITH THE POCKET-PART).

LOOSE-LEAF TEXTS ARE USUALLY SUPPLEMENTED BY ENTIRE PAGES BEING TAKEN OUT, THROWN AWAY AND REPLACED BY NEW PAGES CONTAINING NEW DEVELOPMENTS. THE NEW PAGES USUALLY CONTAIN THE DATE WHEN THE PAGES WERE PRINTED AT THE BOTTOM OF EACH NEW PAGE.

2. CITATORS

A CITATOR IS A TEXT OF CITATIONS INDICATING WHETHER THE CASE, STATUTE OR CONSTITUTIONAL LAW HAS BEEN REFERRED TO IN ANY WAY BY ANY COURT SINCE THE CASE BEING RESEARCHED, THE STATUTE OR CONSTITUTIONAL LAW BECAME EFFECTIVE. THE PRINCIPAL PRINTER OF CITATORS IS THE SHEPARD'S COMPANY OF COLORADO. THEIR PATENTED SYSTEM OF DETERMINING SUBSEQUENT HISTORY HAS BEEN SO WIDELY USED THAT THE WORD "SHEPARDIZING" HAS COME TO MEAN THE PRINCIPAL WAY IN WHICH SUCH HISTORY IS UNCOVERED. SHEPARD'S PRINTS THE CITATIONS FIRST IN SMALL PAMPHLET FORM, WHICH ARE LATER CONSOLIDATED INTO LARGER PAMPHLET FORM, WHICH ARE FINALLY CONSOLIDATED INTO BOUND VOLUMES. THERE ARE A LARGE NUMBER OF SETS OF SHEPARDS. FOR EXAMPLE, THERE ARE SEPARATE SETS FOR:

--SUPREME COURT CASES
--U.S. CIRCUIT COURT AND U.S. DISTRICT COURT CASES
--U.S. STATUTES
--THE REGIONAL REPORTERS
--THE HIGHEST COURT IN EACH STATE
--THE APPELLATE COURTS IN EACH STATE

RECALL THAT A CASE IS OFTEN REPORTED IN DIFFERENT EDITIONS, THE OFFICIAL AND THE UNOFFICIAL EDITION. THE TWO EDITIONS HAVE DIFFERENT CITATIONS. BY GOING TO THE APPROPRIATE CITATOR, THE RESEARCHER SHOULD BE ABLE TO TRACE SUBSEQUENT HISTORY BY STARTING WITH EITHER CITATION. THE HISTORY, OF COURSE, WILL BE THE SAME NO MATTER WHAT CITATION IS USED AS THE STARTER SINCE THE SAME CASE IS INVOLVED. THIS DUPLICATION IS FOR THE CONVENIENCE OF THE RESEARCHER WHO MAY HAVE AVAILABLE AT THE TIME ONLY ONE OF THE CITATIONS, OR WHOSE LIBRARY MAY NOT SUBSCRIBE TO BOTH VERSIONS OF THE CITATORS.

EACH PAGE OF THE CITATOR IS COMPOSED OF ROW UPON ROW OF CITES. AT THE TOP OF EACH PAGE, THERE IS THE NAME OF THE REPORTER AND THE VOLUME, E.G., VOLUME 121 OF FEDERAL REPORTER, 2D. IF THE CASE BEING SHEPARDIZED BEGINS ON PAGE 72 OF VOLUME 121 OF FEDERAL REPORTER 2D, THEN THE RESEARCHER LOOKS FOR PAGE 72 IN DARK PRINT SOMEWHERE ON THE PAGES THAT TREAT VOLUME 121. THE VOLUME NUMBERS

AND THE PAGE NUMBERS ARE ALL TREATED CHRONOLOGICALLY SO THAT IT SHOULD TAKE NO MORE THAN A FEW SECONDS OF PAGE FLIPPING TO LOCATE THE SPOT WHERE THE SHEPARDIZING BEGINS.

DEPENDING UPON THE DATE OF THE CASE BEING SHEPARDIZED, THE RESEARCHER MAY HAVE TO CHECK THREE SEPARATE TEXTS: THE SMALL PAMPHLET, THE LARGER PAMPHLET AND THE BOUND VOLUME.

Example

The case being shepardized was decided in 1950. The researcher first locates the correct set of citators that cover the court that decided the case. He starts with the small pamphlet which was most recently printed (usually within the last several months). He goes to the volume number where his 1950 case was printed, finds the page number where the 1950 case began, and reads down the column to determine what has happened to the case, if anything, during the time covered by the small pamphlet. He then goes to the large pamphlet and repeats the procedure. He then goes to the bound volume and repeats the procedure provided that the bound covers any period of time after 1950. If the volume covers cases from 1900 to 1932, for example, then it obviously would not say anything about a 1950 case.

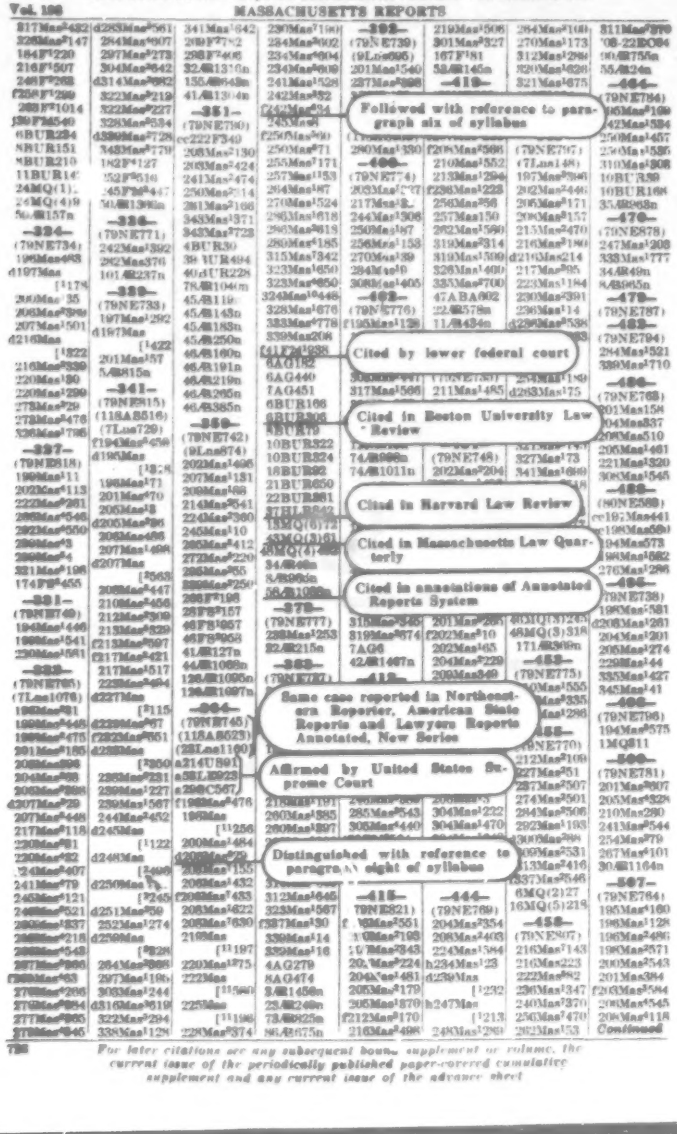
IF THE CASE BEING SHEPARDIZED WAS DECIDED VERY RECENTLY, THEN THE RESEARCHER MAY ONLY HAVE TO CHECK THE SMALL PAMPHLET, SO LONG AS HE HAS CHECKED TO DETERMINE THAT THE PERIODS COVERED BY THE BOUND VOLUME AND THE LARGE PAMPHLET ARE EARLIER THAN THE CASE HE IS SHEPARDIZING.

THE RESEARCHER SHOULD CHECK THE TABLE OF ABBREVIATIONS CONTAINED AFTER THE FIRST FEW PAGES OF EVERY BOUND VOLUME AND LARGE PAMPHLET. (SEE PAGES 36 AND 37 SUPRA FOR SHEPARD'S ABBREVIATIONS). THE ABBREVIATIONS EXPLAINED THERE WILL BE USED THROUGHOUT THE TEXT. FOR EXAMPLE, "A" BESIDE A CASE CITATION MEANS THAT THE CASE WAS "AFFIRMED" ON APPEAL. THE RESEARCHER MUST ALSO CHECK THE LARGER ABBREVIATIONS TABLE (FOR THE ABBREVIATIONS OF COURTS, PERIODICALS, ETC). THIS TABLE IS ALSO AT THE BEGINNING OF THE CITATOR.

FINALLY, RECALL THAT THERE ARE OFTEN DIFFERENT CITATORS FOR THE OFFICIAL AND UNOFFICIAL EDITIONS OF THE SAME CASE. A RESEARCHER MAY ONLY KNOW WHAT THE CITATION (VOLUME AND PAGE NUMBER) IS FOR ONE OF THE EDITIONS. THE CITATOR CAN BE A WAY FOR HIM TO DISCOVER WHAT THE OTHER CITATION (CALLED THE PARALLEL CITE) IS. AFTER HE HAS LOCATED THE CITATOR COVERING THE EDITION THAT HE HAS AND FOUND THE APPROPRIATE VOLUME NUMBER AND PAGE NUMBER, THE FIRST REFERENCE THAT HE WILL FIND UNDER THE PAGE NUMBER WILL BE THE PARALLEL CITATION. THE OFFICIAL EDITION IS ALWAYS PRINTED IN

BOUND VOLUMES AFTER THE UNOFFICIAL EDITION HAS BEEN PRINTED. HENCE, THE RESEARCHER WHO HAS THE UNOFFICIAL CITATION, WILL NOT BE ALBE TO FIND THE PARALLEL CITATION TO THE OFFICIAL EDITION IF THE LATTER HAS NOT BEEN PRINTED AS OF THE DATE WHEN THE CITATOR WAS PRINTED.

SPECIMEN PAGE—Shepard's Massachusetts Citations, Case Edition, 1967


Followed with reference to paragraph six of syllabus
Cited by lower federal court
Cited in Boston University Law Review
Cited in Harvard Law Review
Cited in Massachusetts Law Quarterly
Cited in annotations of Annotated Reports System
Same case reported in Northeastern Reporter, American State Reports and Lawyers Reports Annotated, New Series
Affirmed by United States Supreme Court
Distinguished with reference to paragraph eight of syllabus

State Reports

Illustration

Let us assume that by reference to a digest, encyclopedia, text book or other unit of legal research or the statute law of the state, you have located the case of Welch v. Swasey, reported in Volume 193 Massachusetts Reports at page 364.

The specimen page contains a reproduction of page 726 in the 1967 Case Edition of Shepard's Massachusetts Citations. Note the number of the volume of reports "Vol. 193" in the upper left corner of the page.

An examination of the bold face type numbers appearing in the column locates the page number "—364—" in the third column of citations. This is the initial page of the case under consideration. Following this page number you will find the citations "(79 NE 745)", "(118 AS 523)", "(23 Lns 1160)" indicating that the same case is also reported in 79 Northeastern Reporter 745, 118 American State Reports 523 and 23 Lawyers Reports Annotated, New Series 1160.

In obtaining the history of this case, you will observe that upon appeal to the United States Supreme Court it was affirmed "a" in 214 United States Reports "US" 91, 53 Lawyers' Edition, United States Supreme Court Reports "LE" 923 and 29 Supreme Court Reporter "SC" 567.

It is also to be observed by examining the abbreviations preceding the citations that this case has been followed "f" and distinguished "d" in subsequent cases in the Massachusetts and federal courts.

In the citation "f 193 Mas 8476", the small superior figure "8" in advance of the citing page number 476 indicates that the principle of law brought out in the eighth paragraph of the syllabus of 193 Mas 364 has been followed in 193 Mas 476.

You will note that other citations which contain the superior figure "8" in advance of the citing page number and which deal with this point in particular are 203 Mas 29, 228 Mas 374 and 250 Mas 71.

In addition to the citations in point with paragraph eight of the syllabus, note the numerous citations in point with other paragraphs of the syllabus or other headnotes of this case by the Massachusetts and federal courts. The cases dealing with a point of law in any particular paragraph of the syllabus or headnote may thus be referred to instantly without examining every citing case listed.

This case has also been cited in the Harvard Law Review "HLR", Boston University Law Review "BUR" and Massachusetts Law Quarterly "MQ".

The citations appearing in annotations of the Annotated Reports System are grouped together for convenience of use.

By examining this same volume and page number in any subsequent bound supplement or volume, the current issue of the periodically published paper-covered cumulative supplement and any current issue of the advance sheet of Shepard's Massachusetts Citations, all subsequent citations to this case will be found.

In this instance, as in every instance, Shepard's Citations to cases will enable the lawyer in a very short time to collect the entire body of case law that revolves around and about a given case.

3. The Key System of the West Publishing Company

The West Publishing Company analyzes every case reported throughout the United States. For every case, they write a series of paragraphs, called headnotes, which summarize or quote from the case. (See pages 22 ff.) Each paragraph is intended to capsulize a segment of the case. Theoretically, therefore, if one reads all the headnotes to a case he will have read a concise summary of what the case was about.

West has broken down every area of the law into subject topics. Under this system, every headnote will be located under one or more topics E.g., Search and Sezure, Evidence, Prisons, etc. Each heading is subdivided into key numbers, e.g., ⬅1 Prison, ⬅2 Prison, etc. Every headnote from opinions is assigned a topic label and a key number. West then takes the same key numbers and topics from different cases and consolidates them into what are called digests. Hence, suppose that a researcher is studying an opinion which has a keynote at the beginning as follows: ⬅242 Right to Lien. The researcher goes to the digest volumes that covers the court which decided the opinion. He turns to ⬅242 Right to Lien. There he will find headnotes from every case of that court covering the topic of the right to a lien. It is an effective way for him to determine quickly what the court has said about the topic before and after the opinion was written. (For up-to-date listings, he checks the pocket-parts).

There are separate digests covering Federal Courts and the courts of each individual state. In addition there is a master set of digest that consolidates the headnotes of every case from every court in the country.

Example

At a professional wrestling match in Nebraska, the referee was thrown from the ring in such a way that he struck and injured the plaintiff who was a front row spectator. Can plaintiff sue? Are there any cases on point? How can the digest-key number system help the researcher? He first goes to the index of the digest covering Nebraska cases and locates key topics and key numbers that could cover the facts of his problem. In his search, he comes across key topic "Theaters and Shows" and wants to check key number "6" under this topic. Key number "6" covers "Liabilities for injuries to persons attending" Theaters and Shows. Under key number 6(L8) he finds the case of Klause v. Nebraska State Board of Agriculture.

THEATERS AND SHOWS.

Library references

C.J.S. Theaters and Shows § 1 et seq.

Corpus Juris Secundum reference

⇐2. Statutory and municipal regulations.

Neb. An act prohibiting "all public exhibitions of Hypnotism, Mesmerism, Animal Magnetism, or so-called Psychical Forces, for gain", does not prohibit spiritualistic seances, unless they are public and open and for gain, the words "psychical forces" applying to a seance conducted by a spiritualistic medium, but his act as such not violating statute unless it is public and open and for gain. Comp.St. 1929, § 28-1111.—Dill v. Hamilton, 291 N.W. 62, 137 Neb. 723, 129 A.L.R. 743.

The act prohibiting "all public exhibitions of Hypnotism, Mesmerism, Animal Magnetism, or so-called Psychical Forces, for gain", is a valid exercise of police power, since police power to prohibit public exhibitions for money-making purposes or for gain extends to harmful, immoral or indecent performances, though conducted in the name of religion, and violators of such prohibitions are subject to statutory penalties therefor. Comp.St.1929, § 28-1111.—Dill v. Hamilton, 291 N.W. 62, 137 Neb. 723, 129 A. L.R. 743.

A guaranty of $15 to remunerate a medium for conducting spiritualistic seance as religious ceremony in the worship of God and creation of the fund by voluntary contributions of communicants of Spiritualistic Church do not constitute "gain" within statute forbidding public seances for gain. Comp.St.1929, § 28-1111.—Dill v. Hamilton, 291 N.W. 62, 137 Neb. 723, 129 A.L.R. 743.

Internal Key Number breakdown

⇐6. Liabilities for injuries to persons attending.

(1). In general.

(2). Duty affected by charging for admission, insuring safety or assuming special legal status.

(3). Licensees or invitees.

(4). —— Particular invitees.

(5). Persons liable or entitled to sue.

(6). Limitation of liability.

(7). Particular duties toward participants.

(8). —— Amusement devices.

(9). —— Swimming or bathing.

(10). Particular duties toward spectators.

(11). —— Athletic events.

(12). —— Floor and ground.

(13). —— Lighting, and ushering in darkness.

(14). —— Protection against crowds, assaults and acts of others and ushering in general.

(15). —— Seats and structural defects.

(16). —— Stairs, steps and ramps.

(17). Contributory negligence and assumption of risk.

(18). —— Athletic events.

(19). —— Participants.

(20). Actions in general.

⇐6(5). Persons liable or entitled to sue.

Neb. In personal injury action by spectator at wrestling match, instruction that if jury found that while two wrestlers were on ground outside ring they continued to wrestle and when referee attempted to separate them, one of the wrestlers shoved the referee into the spectator and injured spectator, there was no liability against anyone except wrestler who did the pushing, because such pushing was outside that wrestler's scope of employment, was erroneous, since such wrestler was not, as a matter of law, outside the scope of his employment.—Klause v. Nebraska State Bd. of Agriculture, 35 N.W.2d 104, 150 Neb. 480.

Action for injuries sustained by spectator at wrestling match when referee was thrown or knocked from ring and came in contact with spectator was properly dismissed as to one who procured one of the wrestlers, where such wrestler was in nowise in such person's employ or under his control.—Id.

⇐6(10). Particular duties toward spectators.

Neb. One who operates a place of public amusement or entertainment is held to a stricter accountability for injuries to patrons than owners of private premises generally; and he is not insurer of safety of patrons but owes to them only what under the particular circumstances, amounts to ordinary and reasonable care.—Fimple v. Archer Ballroom Co., 35 N.W. 2d 680, 150 Neb. 681.

⇐6(14). —— Protection against crowds, assaults and acts of others, and ushering in general.

Neb. Ordinance rendering it unlawful for operators of public dance halls to permit persons therein while under influence of liquor or engaging in boisterous conduct is for benefit of individual patrons of dances as well as public at large and could properly be made basis of civil action for damages where dance hall patron was injured by bottle thrown by second patron who was intoxicated.—Fimple v. Archer Ballroom Co., 35 N.W.2d 680, 150 Neb. 681.

⇐6(17). Contributory negligence and assumption of risk.

Neb. Patron who attended large dance at public dance hall did not assume risk of injury from bottle thrown by second patron who was intoxicated.—Fimple v. Archer Ballroom Co., 35 N.W.2d 680, 150 Neb. 681.

⇐6(18). —— Athletic events.

Neb. A spectator at hockey game assumes risk of, and owes duty to protect himself against, such dangers incident to playing of game as are known to him or should be obvious and apparent to reasonable and prudent person in exercise of due care under circumstances.—Tice v. Omaha Coliseum Corporation, 12 N.W.2d 80, 144 Neb. 22, 149 A.L.R. 1164.

Neb. A spectator at a wrestling match is required to exercise due care in protecting himself against known dangers or such as should be known and appreciated by a reasonable person in exercise of due care.—Klause v. Nebraska State Bd. of Agriculture, 35 N.W.2d 104, 150 Neb. 480.

Spectator at wrestling match who was injured when referee was thrown or knocked from ring and came in contact with spectator, was not contributorily negligent, so as to preclude recovery for his injuries, because he sat in front row.—Id.

Spectator at wrestling match who was injured when referee was thrown or knocked from ring and came in contact with spectator, did not assume risk of injury because he sat in front row.—Id.

A spectator at a wrestling event assumes risk only of such dangers as are incident to such events, of which he had knowledge or

Point of law in illustrative example

CHAPTER FIFTEEN

HOW TO START LEGAL RESEARCHING

ONCE THE RESEARCHER HAS A COMMAND OF MOST OF THE BASICS (E.G., WHAT ARE THE DIFFERENT KINDS OF LAWS AND HOW ARE THEY READ OR INTERPRETED; WHAT IS LEGAL AUTHORITY; HOW IS LAW ANNOTATED), HIS TASK IS AS FOLLOWS: HOW TO BEGIN RESEARCH ON A SPECIFIC PROBLEM? WHERE TO BEGIN? DOES HE START WITH CASES? DIGESTS? FORMBOOKS? ETC.

A NUMBER OF GUIDELINES MAY BE HELPFUL ON THESE QUESTIONS:

1. THERE ARE NO ABSOLUTE RULES ON WHERE TO BEGIN.

AS INDICATED EARLIER (PAGE 11 SUPRA), RESEARCHERS TEND TO DEVELOP THEIR OWN PARTICULAR STYLE OF RESEARCH. THERE ARE FEW, IF ANY, "DO'S" AND "DON'TS" THAT APPLY TO EVERY SITUATION. THIS IS SO FOR THE QUESTION OF WHERE TO BEGIN AS WELL AS FOR EVERY OTHER QUESTION CONFRONTING THE RESEARCHER. ONE RESEARCHER MAY START WITH THE DIGESTS, ANOTHER MAY BEGIN WITH A HORNBOOK. THE METHOD IS NOT IMPORTANT SO LONG AS THE RIGHT RESULT IS REACHED. THE RIGHT RESULT IS A COMPREHENSIVE ANALYSIS OF WHAT LAW APPLIES TO THE PROBLEM BEING RESEARCHED. AS THE RESEARCHER GAINS EXPERIENCE HE WILL DEVELOP THE STYLE OR FORMAT OF RESEARCH WITH WHICH HE IS MOST COMFORTABLE.

2. FLEXIBILITY IS KEY.

AS WITH SO MANY AREAS OF LEGAL RESEARCH, FLEXIBILITY IS PARAMOUNT. IF THE RESEARCHER STARTS WITH A DIGEST ONE TIME, HE SHOULD BE FLEXIBLE ENOUGH TO START WITH THE STATUTORY CODE OR AN ENCYCLOPEDIA NEXT TIME IF THE DIGEST APPROACH DID NOT PROVE FRUITFUL.

THE RESEARCHER SHOULD BE PREPARED FOR FRUSTRATION; NINE TIMES OUT OF TEN, HE WILL MEET IT BECAUSE OF THE VAST NUMBER OF AVENUES THAT HE COULD PURSUE. SUPPOSE THAT THE RESEARCHER STARTS WITH THE STATUTORY CODE. FROM THE CODE HE MOVES TO CASES AND THEN TO FORMBOOKS. AT THIS STAGE HE DISCOVERS THAT HIS INITIAL SEARCH OF THE STATUTORY CODE WAS INADEQUATE BECAUSE OF NEW FACTORS UNCOVERED. HE THEN GOES BACK TO THE CODE AND STARTS AGAIN WITH HIS NEWLY DISCOVERED PERSPECTIVE GUIDING HIM THIS TIME . WHEN BACK TO THE CODE, HE RUNS INTO DIFFICULTY. HE CAN'T FIND WHAT HE IS AFTER. HIS FRESH PERSPECTIVE WAS NOT THAT HELPFUL AFTER ALL, YET HE STILL "FEELS" THAT THE CODE HAS SOMETHING TO OFFER IF HE JUST KEEPS DIGGING. STILL NO LUCK. HE SITS BACK, LOOKS UP AT THE CEILING

AND WONDERS WHAT TO DO NEXT. HE VAGUELY REMEMBERS SOMETHING HE READ IN A FOOTNOTE "SOMEWHERE" THAT HE THINKS MIGHT HELP HIM GET BACK ON THE TRACK. HE SPENDS TWENTY MINUTES TRYING TO FIND THE FOOTNOTE AGAIN. HE FINDS IT, BUT HIS MEMORY DECEIVED HIM: THE FOOTNOTE COVERED SOMETHING ELSE ENTIRELY. HE DECIDES THAT HE HAS SPENT NOUGH TIME FOR THE MOMENT ON THE CODE. HE WILL RETURN TO IT LATER. THERE ARE SEVERAL CASES THAT HE WANTS TO READ AGAIN. HE DOES SO. IN THE MIDDLE OF READING ONE OF THE CASES, A THOUGHT COMES TO HIM ABOUT THE CODE. (THE CASE DID NOT MENTION THE CODE. THE CASE JUST "SOMEHOW" TRIGGERED THE THOUGHT). HE GOES BACK TO THE CODE WITH HIS INSIGHT AND FINDS WHAT HE IS AFTER.

THE POINT IS THAT IT IS MORE RELEVANT TO TALK OF STARTING POINTS THAN OF A STARTING POINT. IT IS NOT A SIGN OF BAD RESEARCH IF THE RESEARCHER FINDS HIMSELF GOING AROUND IN CIRCLES SO LONG AS EVERY TIME HE GOES BACK TO "START" AGAIN, HE DOES SO WITH A FRESH PAIR OF EYES, SO LONG AS HE IS LEARNING FROM THE "MISTAKES" OR BLIND ALLEYS THAT HE HAS CONFRONTED.

3. THE INDEX AND TABLE OF CONTENTS OF THE STATUTORY CODE IS OFTEN A USEFUL STARTING POINT.

STARTING WITH THE CODE IS NOT ESSENTIAL, BUT THE RESEARCHER MAY FIND IT TO BE PRODUCTIVE. THE STATUTORY CODE WILL NORMALLY CONTAIN A NUMBER OF USEFUL ANNOTATIONS, E.G., CROSS-REFERENCES, CASE CITATIONS ETC.

4. THE RESEARCHER MAY ASK OTHER RESEARCHERS FOR LEADS.

VERY OFTEN, OTHER ATTORNEYS OR PARALEGALS WILL BE FAMILIAR WITH SOME ASPECT OF THE PROBLEM BEING RESEARCHED. WHENEVER CONVENIENT, THE RESEARCHER SHOULD ASK THEM FOR SOME LEADS ON WHERE TO LOOK.

5. CHECK RESEARCH DONE BY OTHERS.

AS INDICATED EARLIER (PAGE 9 SUPRA), THE RESEARCHER SHOULD TAKE ADVANTAGE OF RESEARCH ALREADY DONE BY OTHERS ON THE SAME OR SIMILAR PROBLEMS. THE BEST WAY TO BEGIN MAY BE BY TAKING ADVANTAGE OF THIS OTHER RESEARCH. (NOTE, HOWEVER, THE DANGERS OF THIS APPROACH POINTED OUT ON PAGE 9 SUPRA). WHAT OTHER SUCH RESEARCH MAY BE AVAILABLE? SEVERAL SOURCES ARE MENTIONED HERE:

A) THE OFFICE WHERE YOU WORK MAY HAVE MEMORANDA WRITTEN IN THE PAST ON SIMILAR PROBLEMS.

B) A HORNBOOK, LAW REVIEW ARTICLE OR OTHER TREATISE MAY HAVE EXTENSIVE RESEARCH WITHIN IT. (YOU MAY WANT TO IGNORE THE CONCLUSIONS OF THE TREATISE AND SIMPLY TAKE DOWN ALL THE CITATIONS PROVIDED THEREIN).

c) Often, if you have a case that is directly or somewhat on point, the judge will have done extensive research in supporting his conclusions. Some opinions, for example, will have literally scores of citations.

With these guidelines in mind, the researcher should be familiar with the three basic approaches to uncovering the law:

A. Descriptive Word Method
B. Topic Method
C. Case Method

A. Descriptive Word Method

The researcher carefully identifies all the facts of his problem. Every problem is based on a fact situation. He can categorize his facts in a number of ways:

1. Parties

Who is involved? A driver? A policeman? A drunk? A child? A student? Etc.

2. Places

Where did the event happen or allegedly happen? On the beach? At home? In a foreign country? At a factory? Etc.

3. What Happened

Car collision? Check bounced? Father died? Money found? Etc.

From this list the researcher picks the most descriptive words (e.g., drunk, beach, collision, check, etc.) and looks them up in the index to various law books. The Digest, for example, may have sections called "Descriptive Word Index." He checks the words in the index and finds where they are treated in the body of the book.

Sometimes the index will not list such words alphabetically. They may be found, however, under general topics. If you don't know what topic your word falls under you will probably not find reference to the word. Hence the topic method must be used.

B. Topic Method

Take all your descriptive words and generalize them into broader topics. Each book or set of books may have its own topic breakdown. On the following two pages, for example, you will

FIND THE TOPIC BREAKDOWN OF THE WEST DIGEST SYSTEM. FIT YOUR DESCRIPTIVE WORDS UNDER ONE OR MORE OF THE MANY TOPICS LISTED ON THESE TWO PAGES AND CHECK THESE TOPICS IN THE BODY OF THE DIGESTS. OTHER LAW BOOKS (E.G., STATUTORY CODES) WILL HAVE THEIR OWN TOPIC BREAKDOWN. THE RESEARCHER MUST BE FAMILIAR WITH IT IF HE WANTS TO KNOW WHERE, IF ANYWHERE, THE BOOK COVERS HIS DESCRIPTIVE WORDS.

KEY NUMBER SYSTEM LAW CHART

Digest Topics arranged by subject matter in the Key Number classification system.

1. PERSONS
2. PROPERTY
3. CONTRACTS
4. TORTS
5. CRIMES
6. REMEDIES
7. GOVERNMENT

1. PERSONS

RELATING TO NATURAL PERSONS IN GENERAL

Civil Rights
Dead Bodies
Death
Domicile
Food
Health
Holidays
Intoxicating Liquors
Names
Poisons
Seals
Signatures
Sunday
Time
Weapons

PARTICULAR CLASSES OF NATURAL PERSONS

Absentees
Aliens
Bastards
Citizens
Convicts
Drunkards
Indians
Infants
Mental Health
Paupers
Slaves
Spendthrifts

PERSONAL RELATIONS

Adoption
Apprentices
Attorney and Client
Executors and Administrators
Guardian and Ward
Husband and Wife
Labor Relations
Marriage
Master and Servant
Parent and Child
Principal and Agent
Workmen's Compensation

ASSOCIATED AND ARTIFICIAL PERSONS

Associations
Beneficial Associations
Building and Loan Associations
Clubs
Colleges and Universities
Corporations
Exchanges
Joint Stock Companies and Business Trusts
Partnership
Religious Societies

PARTICULAR OCCUPATIONS

Agriculture
Auctions and Auctioneers
Aviation
Banks and Banking
Bridges
Brokers
Canals
Carriers
Commerce
Detectives
Druggists
Electricity
Explosives
Factors
Ferries
Gas
Hawkers and Peddlers
Innkeepers
Insurance
Licenses
Livery Stable Keepers
Manufactures
Mercantile Agencies
Monopolies
Pawnbrokers and Money Lenders
Physicians and Surgeons
Pilots
Railroads
Seamen
Shipping
Steam
Street Railroads
Telecommunications
Theaters and Shows
Towage
Turnpikes and Toll Roads
Warehousemen
Wharves

2. PROPERTY

NATURE, SUBJECTS, AND INCIDENTS OF OWNERSHIP IN GENERAL

Abandonment
Accession
Adjoining Landowners
Confusion of Goods
Improvements
Property

PARTICULAR SUBJECTS AND INCIDENTS OF OWNERSHIP

Animals
Annuities
Automobiles
Boundaries
Cemeteries
Common Lands
Copyrights
Crops
Dogs
Fish
Fixtures
Franchises
Game
Good Will
Literary Property
Logs and Logging
Mines and Minerals
Navigable Waters
Party Walls
Patents
Public Lands
Trade Regulation
Waters and Water Courses
Woods and Forests

PARTICULAR CLASSES OF ESTATES OR INTERESTS IN PROPERTY

Charities
Curtesy
Dower
Easements
Estates
Estates Tail
Ground Rents
Joint Tenancy
Landlord and Tenant
Life Estates
Perpetuities
Powers
Remainders
Reversions
Tenancy in Common
Trusts

PARTICULAR MODES OF ACQUIRING OR TRANSFERRING PROPERTY

Abstracts of Title
Adverse Possession
Alteration of Instruments
Assignments
Assignments for Benefit of Creditors
Chattel Mortgages
Conversion
Dedication
Deeds
Descent and Distribution
Escheat
Escrows
Finding Lost Goods
Fraudulent Conveyances
Gifts
Lost Instruments
Mortgages
Pledges
Secured Transactions
Wills

3. CONTRACTS

NATURE, REQUISITES, AND INCIDENTS OF AGREEMENTS IN GENERAL

Contracts
Customs and Usages
Frauds, Statute of
Interest
Usury

PARTICULAR CLASSES OF AGREEMENTS

Bailment
Bills and Notes
Bonds
Breach of Marriage Promise
Champerty and Maintenance
Compositions with Creditors
Compromise and Settlement
Covenants
Depositaries
Exchange of Property
Gaming
Guaranty
Indemnity
Joint Adventures
Lotteries
Principal and Surety
Rewards
Sales
Subscriptions
Vendor and Purchaser

PARTICULAR CLASSES OF IMPLIED OR CONSTRUCTIVE CONTRACTS OR QUASI CONTRACTS

Account Stated
Contribution
Money Lent
Money Paid
Money Received
Use and Occupation
Work and Labor

PARTICULAR MODES OF DISCHARGING CONTRACTS

Novation
Payment
Release
Subrogation
Tender

4. TORTS

Assault and Battery
Collision
Conspiracy
False Imprisonment
Forcible Entry and Detainer

Fraud
Libel and Slander
Malicious Prosecution
Negligence
Nuisance
Seduction
Torts
Trespass
Trover and Conversion
Waste

5. CRIMES

Abduction
Abortion
Adulteration
Adultery
Affray
Arson
Bigamy
Blasphemy
Breach of the Peace
Bribery
Burglary
Common Scold
Compounding Offenses
Counterfeiting
Criminal Law
Disorderly Conduct
Disorderly House
Disturbance of Public Assemblage
Dueling
Embezzlement
Embracery
Escape
Extortion
False Personation
False Pretenses
Fires
Forgery
Fornication
Homicide
Incest
Insurrection and Sedition
Kidnapping
Larceny
Lewdness
Malicious Mischief
Mayhem
Miscegenation
Neutrality Laws
Obscenity
Obstructing Justice
Perjury
Piracy
Prize Fighting
Prostitution
Rape
Receiving Stolen Goods
Rescue
Riot
Robbery
Sodomy
Suicide
Threats
Treason
Unlawful Assembly
Vagrancy

6. REMEDIES

REMEDIES BY ACT OR AGREEMENT OF PARTIES

Accord and Satisfaction
Arbitration and Award
Submission of Controversy

REMEDIES BY POSSESSION OR NOTICE

Liens
Lis Pendens
Maritime Liens
Mechanics' Liens
Notice
Salvage

MEANS AND METHODS OF PROOF

Acknowledgment
Affidavits
Depositions
Estoppel
Evidence
Oath
Records
Witnesses

CIVIL ACTIONS IN GENERAL

Action
Declaratory Judgment
Election of Remedies
Limitation of Actions
Parties
Set Off and Counterclaim
Venue

PARTICULAR PROCEEDINGS IN CIVIL ACTIONS

Abatement and Revival
Appearance
Continuance
Costs
Damages
Dismissal and Nonsuit
Execution
Exemptions
Homestead
Judgment
Jury
Motions
Pleading
Process
Reference
Stipulations
Trial

PARTICULAR REMEDIES INCIDENT TO CIVIL ACTIONS

Arrest
Assistance, Writ of
Attachment
Bail
Deposits in Court
Discovery
Garnishment
Injunction
Judicial Sales
Ne Exeat
Receivers
Recognizances
Sequestration
Undertakings

PARTICULAR MODES OF REVIEW IN CIVIL ACTIONS

Appeal and Error
Audita Querela
Certiorari
Exceptions, Bill of
New Trial
Review

ACTIONS TO ESTABLISH OWNERSHIP OR RECOVER POSSESSION OF SPECIFIC PROPERTY

Intrusion
Ejectment
Entry, Writ of
Interpleader
Possessory Warrant
Quieting Title
Real Actions
Replevin
Trespass to Try Title

FORMS OF ACTIONS FOR DEBTS OR DAMAGES

Account, Action on
Action on the Case
Assumpsit, Action of
Covenant, Action of
Debt, Action of

ACTIONS FOR PARTICULAR FORMS OR SPECIAL RELIEF

Account
Cancellation of Instruments
Creditors' Suit
Divorce
Marshaling Assets and Securities
Partition
Reformation of Instruments
Specific Performance

CIVIL PROCEEDINGS OTHER THAN ACTIONS

Habeas Corpus
Mandamus
Prohibition
Quo Warranto
Scire Facias
Supersedeas

SPECIAL CIVIL JURISDICTIONS AND PROCEDURE THEREIN

Admiralty
Bankruptcy
Equity
Federal Civil Procedure
Insolvency

PROCEEDINGS PECULIAR TO CRIMINAL CASES

Extradition
Fines
Forfeitures
Grand Jury
Indictment and Information
Pardon and Parole
Penalties
Searches and Seizures

7. GOVERNMENT

POLITICAL BODIES AND DIVISIONS

Counties
District of Columbia
Municipal Corporations
States
Territories
Towns
United States

SYSTEMS AND SOURCES OF LAW

Administrative Law and Procedure
Common Law
Constitutional Law
International Law
Parliamentary Law
Statutes
Treaties

LEGISLATIVE AND EXECUTIVE POWERS AND FUNCTIONS

Bounties
Census
Customs Duties
Draits
Eminent Domain
Highways
Inspection
Internal Revenue
Levees and Flood Control
Pensions
Post Office
Private Roads
Public Service Commissions
Schools and School Districts
Social Security and Public Welfare
Taxation
Weights and Measures
Zoning

JUDICIAL POWERS AND FUNCTIONS, AND COURTS AND THEIR OFFICERS

Amicus Curiæ
Clerks of Courts
Contempt
Court Commissioners
Courts
Judges
Justices of the Peace
Removal of Cases
Reports
United States Commissioners

CIVIL SERVICE, OFFICERS, AND INSTITUTIONS

Ambassadors and Consuls
Asylums
Attorney General
Coroners
District and Prosecuting Attorneys
Elections
Hospitals
Newspapers
Notaries
Officers
Prisons
Reformatories
Registers of Deeds
Sheriffs and Constables
United States Marshals

MILITARY AND NAVAL [illegible] AND WAR

Armories
Militia
War and National Defense

C. Case Method

To use this method, the researcher must have at least one case citation to begin with. The law book(s) he is examining may have a table of cases. If so, he consults it to determine if the case he has is mentioned. (The cases normally will be listed alphabetically). He then goes to the body of the book where his case is treated; he will probably find extensive annotations, or at least leads on where he can find these annotations.

CHAPTER SIXTEEN

FINDING APPLICABLE CONSTITUTIONAL LAW

THERE ARE SEVEN STEPS THAT COULD BE USED IN FINDING APPLICABLE CONSTITUTIONAL LAW (I.E., CONSTITUTIONAL LAW THAT MAY APPLY TO THE FACTS OF YOUR PROBLEM):

1. *Locate the volumes in the library where an annotated edition of the constitution is found;*
2. *Determine which constitution, if any, is authority for the facts of the problem being researched;*
3. *Use the index and the table of contents to the constitution to determine whether any of its provisions apply to the problem;*
4. *Shepardize the constitutional provisions that you think might apply;*
5. *Determine whether there are cases interpreting these constitutional provisions that are analogous to the facts of the problem being researched;*
6. *Determine whether these cases are mandatory or persuasive authority;*
7. *Shepardize these cases.*

THE RESEARCHER THEN WRITES A MEMORANDUM OF LAW (SEE PART II INFRA) PRESENTING HIS CONCLUSIONS FROM THE ABOVE SEVEN STEPS. IT IS NOT NECESSARY FOR THE RESEARCHER TO FOLLOW EACH OF THESE STEPS IN THE ORDER PRESENTED ABOVE. IF A PROVISION OF THE CONSTITUTION IS AT ISSUE IN THE PROBLEM, HOWEVER, A THOROUGH JOB OF LEGAL RESEARCH WILL NECESSIATE THAT ALL SEVEN STEPS BE FOLLOWED IN WHATEVER ORDER THE RESEARCHER ADOPTS. HE WILL VERY LIKELY BE SHIFTING FROM STEP TO STEP BEFORE HE IS READY TO STATE HIS CONCLUSIONS.

THERE ARE MANY ANNOTATED EDITIONS OF THE U.S. CONSTITUTION AVAILABLE. FOR EXAMPLE:

1. THE FIRST SEVERAL VOLUMES OF UNITED STATES CODE ANNOTATED;
2. THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION;
3. VOLUME 14 OF UNITED STATES SUPREME COURT REPORTS DIGEST;
4. UNITED STATES SUPREME COURT DIGEST;
5. MODERN FEDERAL PRACTICE DIGEST.

STATE CONSTITUTIONS ARE ALSO OFTEN PRINTED IN A NUMBER OF TEXTS. FOR EXAMPLE, THE FIRST SEVERAL VOLUMES OF THE STATE'S STATUTORY CODE. LOCAL CONSTITUTIONS AND CHARTERS ARE USUALLY PRINTED IN SEPARATE VOLUMES.

THE RESEARCHER MUST MAKE A PRELIMINARY DETERMINATION OF WHICH CONSTITUTION, IF ANY, IS RELEVANT TO HIS PROBLEM. (SEE CHAPTER ELEVEN SUPRA ON LEGAL AUTHORITY). FOR PURPOSES OF DISCUSSION, WE WILL ASSUME THAT CONSTITUTIONAL LAW IS RELEVANT.

THE NEXT STEP IS TO USE THE INDEX AND THE TABLE OF CONTENTS TO DETERMINE WHICH CONSTITUTIONAL PROVISIONS MIGHT COVER THE PROBLEM. THE RESEARCHER MUST HAVE BEFORE HIM A PRECISELY WORDED STATEMENT OF THE FACTS INVOLVED IN THE PROBLEM SUBDIVIDED ACCORDING TO MAJOR CATEGORIES. HE THEN DIGS INTO THE TABLE OF CONTENTS AND/OR THE INDEX OF:

1. THE SEPARATE VOLUMES ON THE CONSTITUTION;
2. THE ANNOTATED SET OF STATUTES THAT ALSO CONTAINS THE CONSTITUTION;
3. THE DIGEST TO THE CONSTITUTION;

IF RELEVANT PROVISIONS ARE FOUND, THEN THE RESEARCHER MUST CHECK THE POCKET-PARTS AND ANY POSSIBLE REPLACEMENT VOLUME TO DETERMINE WHETHER THE PROVISION HAS BEEN AMENDED OR REPEALED.

THEN AN EXHAUSTIVE CHECK OF CASE LAW MUST BE MADE TO DETERMINE WHETHER CASES EXIST WHICH HAVE INTERPRETED THE PROVISION OF THE CONSTITUTION BEING STUDIED. SUCH CASES ARE FOUND IN THE FOLLOWING WAYS:

1. CHECK THE HEADNOTES FOLLOWING THE CONSTITUTIONAL PROVISION IN ANNOTATED EDITIONS (ALSO CHECK POCKET-PART FOR ADDITIONAL HEADNOTES);
2. CHECK THE HEADNOTES IN THE DIGEST OF THE CONSTITUTION;
3. GO TO SHEPARD'S CITATOR COVERING THE CONSTITUTION AND LOOK UP THE CONSTITUTIONAL PROVISION. WRITE DOWN THE CITATIONS TO OPINIONS TREATING THAT PROVISION AND READ SELECTIVE ONES OR ALL OF THEM.
4. READ A COMMENTARY (LAW REVIEW, ENCYCLOPEDIA ETC.) ON THE CONSTITUTIONAL PROVISION, AND CHECK THE OPINIONS IT GIVES THAT TREAT THE PROVISION.
5. WORDS AND PHRASES (SEE PAGE 22 SUPRA).

HAVING FOUND OPINIONS THAT INTERPRET THE PROVISION IN QUESTION, THE RESEARCHER MUST THEN DETERMINE WHETHER THE OPINIONS ARE ANALOGOUS TO THE FACTS OF HIS PROBLEM (SEE CHAPTER TWELVE SUPRA). THE NEXT QUESTION THAT MUST BE ASKED OF ANALOGOUS CASES OR OPINIONS IS: ARE THEY MANDATORY OR PERSUASIVE AUTHORITY (SEE CHAPTER ELEVEN SUPRA). ALL OF THE CASES THAT ARE MANDATORY AUTHORITY MUST THEN BE SHEPARDIZED TO DETERMINE WHETHER THEY ARE STILL GOOD LAW. THE SAME IS TRUE OF AS MANY OF THE CASES THAT ARE DEEMED TO BE PERSUASIVE AUTHORITY THAT THE RESEARCHER INTENDS TO USE IN HIS MEMORANDUM.

THE RESEARCHER IS NOW READY TO COLLECT HIS NOTES AND PREPARE A MEMORANDUM OF LAW PRESENTING THE CONCLUSIONS OF HIS LEGAL RESEARCH ON THIS CONSTITUTIONAL PROVISION AS APPLICABLE OR AS ARGUABLY APPLICABLE TO THE FACTS OF HIS PROBLEM.

CHAPTER SEVENTEEN

FINDING APPLICABLE STATUTORY LAW

A RESEARCHER OFTEN BEGINS HIS RESEARCH WITH STATUTORY LAW. FEDERAL STATUTES ARE FOUND IN THE UNITED STATES CODE, THE OFFICIAL EDITION. THERE ARE TWO UNOFFICIAL, ANNOTATED EDITIONS, THE UNITED STATES CODE ANNOTATED AND THE FEDERAL CODE ANNOTATED. FOR STATE STATUTES, MOST LIBRARIES HAVE ONLY THE ANNOTATED, UNOFFICIAL EDITION, E.G., UTAH CODE ANNOTATED.

IF THE RESEARCHER HAPPENS TO KNOW WHAT AREA OF THE CODE COVERS HIS PROBLEM, HE GOES THERE DIRECTLY. IF HE DOES NOT KNOW THEN HE MUST CAREFULLY CATEGORIZE THE STATEMENT OF HIS PROBLEM SO THAT HE CAN EFFECTIVELY USE THE TABLES OF CONTENT AND THE INDEX VOLUMES. (SEE CHAPTER FIFTEEN SUPRA). FOR EXAMPLE, SUPPOSE HIS FACTS ARE AS FOLLOWS:

> *"X" bought a refrigerator from "Y" Company. When "X" got it home, it exploded. Two people were injured. "Y" Company said that the damage occurred in transit which was not handled by "Y" Company. "Y" told "X" that she must sue the company that delivered the refrigerator to her.*

THE RESEARCHER MIGHT FIRST THINK OF THE GENERAL TOPICS OF THE LAW INTO WHICH THIS PROBLEM MIGHT FIT:

CONSUMER LAW
CONTRACT LAW
TORT LAW

HE THEN GOES TO THE INDEX VOLUMES AT THE END OF THE CODE AND LOOKS UNDER THESE HEADINGS, STARTING WITH THE ONE HE THINKS MIGHT BE MOST PRODUCTIVE.

IF HE IS NOT ABLE TO FIND THE RIGHT GENERAL CATEGORIES THROUGH THIS APPROACH, HE SHOULD GO TO THE FIRST VOLUME OF THE CODE AND EXAMINE THE GENERAL SUBJECT CATEGORIES FOR THE ENTIRE SET OF VOLUMES. THIS LIST SHOULD BE WITHIN THE FIRST FEW PAGES OF THE FIRST VOLUME (AND IT IS SOMETIMES FOUND IN THE FIRST FEW PAGES OF EVERY VOLUME IN THE CODE). THIS LIST SHOULD HAVE ABOUT FIFTY TO ONE HUNDRED ENTRIES WHICH CAN BE BRIEFLY SCANNED IN ORDER TO ASSESS WHICH ENTIRES MIGHT SAY SOMETHING ABOUT THE PROBLEM. A RESEARCHER WHO IS RELATIVELY NEW TO THE CODE SHOULD STUDY THIS LIST AS SOON AS HE CAN. HE NEEDS TO BECOME FAMILIAR WITH THE STRUCTURE OF THE CODE.

IN THE REFRIGERATOR HYPOTHETICAL SUPPOSE THAT THE RESEARCHER FINDS THE INDEX VOLUME TREATING CONSUMER LAW AND DECIDES TO CHECK

IT. HE WILL VERY LIKELY FIND HUNDREDS OF HEADINGS AND SUB-HEADINGS UNDER IT. HOW DOES HE PROCEED? FIRST HE MAY THINK OF AS MANY TOPICS UNDER CONSUMER LAW HE FEELS MAY FIT HIS PROBLEM. FOR EXAMPLE:

WARRANTY
FRAUD
SALES
LIABILITY

HE CHECKS UNDER EACH OF THESE HEADINGS, STARTING WITH THE ONE HE THINKS MIGHT BE MOST PRODUCTIVE. THE SECOND APPROACH, WHICH IS OFTEN PURSUED SIMULTANEOUSLY WITH THE FIRST, IS TO BREAK DOWN THE FACTS INTO AS MANY DESCRIPTIVE WORDS OR KEY FACTS AS POSSIBLE. FOR EXAMPLE:

REFRIGERATOR
EXPLOSION
INJURY
DAMAGE
TRANSIT
SHIPMENT

THESE WORDS ARE THEN CHECKED UNDER CONSUMER LAW.

EVERY TIME A WORD IS LOOKED UP THE RESEARCHER SHOULD BE THINKING OF OTHER WORDS WITH THE SAME MEANING OR WORDS THAT FALL INTO BROADER AND MORE SPECIFIC HEADINGS. FOR EXAMPLE:

REFRIGERATOR - APPLIANCE, FREEZER, ELECTRIC APPLIANCE, GAS APPLIANCE, ETC.
EXPLOSION - BREAKDOWN, BODILY INJURY, FIRE, ETC.
INJURY - PEOPLE, BODILY INJURY, EXPLOSION, PAIN AND SUFFERING, ETC.

THESE CATEGORIES AND SUB-CATEGORIES CAN BE CHECKED IN TWO INDICES. FIRST AT THE END OF ALL THE VOLUMES, AND SECOND, AT THE END OF EACH VOLUME OR SET OF VOLUMES COVERING A SINGLE MAJOR SUBJECT, E.G., CONSUMER LAW. EACH SUCH VOLUME OR SET OF VOLUMES ALSO HAS ITS OWN TABLE OF CONTENTS WHICH SHOULD BE EXAMINED IN THE SAME WAY.

THERE ARE OTHER IN-ROADS TO STATUTES THAT SHOULD BE EXPLORED:

1. Popular Name Table

SOME STATUTES HAVE ACQUIRED A POPULAR NAME, E.G., THE TAFT-HARTLY ACT. THE FEDERAL AND STATE CODES OFTEN HAVE A SEPARATE "POPULAR NAME" INDEX AT THE END OF THE VOLUMES, AND THIS SHOULD BE CHECKED IF THE RESEARCHER HAPPENS TO KNOW THE POPULAR NAME OF A STATUTE THAT APPLIES OR THAT MIGHT APPLY TO HIS PROBLEM.

2. Words and Phrases

This is a multi-volume set of definitions covering every court in the country. The researcher checks the word or phrase he is interested in. The definitions come from court opinions. The researcher checks the court opinions or cases from his state. In reading such opinions, he will often find references to statutes. Hence, he goes from Words and Phrases, to cases, to statutes.

Whenever a researcher is pursuing statute leads through cases, he must be very careful to be sure that the statutes listed in the case are still in effect or are still referred to by the same name and section number in the current codes. Very often statutes are recodified, changed or otherwise modified. A court opinion written before such modification will, of course, reflect the old version of the statute. References to such statutes in cases must be translated into their current version through checking the Replacement Volume, if any, or the Table of Statutes at the beginning of the statutory code.

3. Cross-References

Suppose that the researcher checks a statute under a heading that he thought might cover the problem. Upon reading the statute, he finds that it was not on point, although it was in the general area of the problem. At the end of the statutory section of the annotated edition of the code, he will often find cross-references to other statutory sections. (See Chapter Eight supra). These references may lead him to more relevant sections.

4. Digests

As indicated, (See Chapters Three and Twelve supra), digests are summaries of case opinions. The researcher can try to find statutes through the case opinion summaries. First he selects the digest volumes that cover the courts he is involved with, E.G., the digest volumes covering every court in a particular state. These digests have tables of contents and indices which can be checked under the same headings and sub-headings that he used in for the tables of content and indices of the statutory codes directly.

5. Commentaries

Encyclopedias, hornbooks, law review articles, etc. often comment upon general and specific areas of the law. In so doing, they invariably refer to statutory law governing those areas. These commentaries can be excellent leads for the researcher to determine what statutes in the code should be checked for his problem.

Once a statute is found, it must be annotated and shepardized to determine what has happened to it, if anything, since it became effective.

Chapter Eighteen

Finding Applicable Regulatory Law

FINDING REGULATIONS OF ADMINISTRATIVE AGENCIES CAN BE DIFFICULT FOR THE FOLLOWING REASONS:

1. *The regulations may not be made available to the public.*
2. *They may be made available to the public in piecemeal fashion only.*
3. *They may not be codified or arranged in any coherent order other than chronologically.*
4. *They may have poor tables of contents and indices, or none at all.*
5. *They may not be updated to reflect changes. It's almost impossible to shepardize regulations.*

HENCE THE RESEARCHER CAN BE AT A GREAT DISADVANTAGE. THERE ARE SOME STEPS THAT HE CAN TAKE TO OFFSET THESE DISABILITIES:

1. WRITE OR CALL THE AGENCY IN QUESTION AND ASK TO BE PLACED ON THEIR MAILING LIST TO RECEIVE ALL ISSUED REGULATIONS.

2. WRITE OR CALL THE AGENCY IN QUESTION AND ASK TO BE SENT (OR ASK WHERE YOU CAN FIND) REGULATIONS COVERING THE SPECIFIC PROBLEM BEING RESEARCHED. THE AGENCY MAY HAVE ITS OWN LAW LIBRARY AVAILABLE TO THE PUBLIC. IF IT IS CONVENIENTLY LOCATED, THE RESEARCHER COULD GO TO IT.

3. FOR AGENCIES THAT THE RESEARCHER WILL BE WORKING WITH REGULARLY, HE SHOULD GET ON THEIR MAILING LIST FOR (OR OTHERWISE SEEK TO OBTAIN) NOT ONLY THE REGULATIONS OF THE AGENCY, BUT ALSO THEIR ANNUAL REPORTS, MANUALS OF PROCEDURE, REPORTS OF SPECIAL STUDIES, BULLETINS ETC.

4. CHECK COURT OPINIONS, E.G., THROUGH DIGEST, TO DETERMINE IF THE CASES DISCUSS AND REFER TO REGULATIONS OF THE AGENCY IN QUESTION. SHEPARDIZE THE CASES.

5. GO TO THE STATUTORY CODE GOVERNING THE AGENCY IN QUESTION, PARTICULARLY THE STATUTORY SECTION, IF ANY, THAT GIVES THE AGENCY THE AUTHORITY TO WRITE REGULATIONS. THE ANNOTATIONS FOLLOWING THE SECTIONS MAY PROVIDE LEADS TO THE REGULATIONS.

6. SOMETIMES, THE AGENCY WILL NOT ONLY ISSUE REGULATIONS BUT WRITE OPINIONS OR DECISIONS PURSUANT TO THEIR QUASI-JUDICIAL FUNCTION. THESE OPINIONS ARE SOMETIMES PUBLISHED. THEY OFTEN REFER TO THE AGENCY REGULATIONS AND HENCE ARE LEADS TO SUCH MATERIAL. THE SAME DIFFICULTY REFERRED TO ABOVE, HOWEVER, ON FINDING REGULATIONS, APPLIES EQUALLY WELL, IF NOT MORE SO TO SUCH DECISIONS.

7. CHECK TO SEE IF A REPORTER-COMMENTARY (SEE PAGE 29 SUPRA) COVERS THE AGENCY IN QUESTION. THERE ARE MANY LOOSE-LEAF TEXTS PREPARED BY PRIVATE PUBLISHING COMPANIES THAT PROVIDE THE READER WITH COMPREHENSIVE AND UP-TO-DATE DATA ON AGENCIES SUCH AS THE REGULATIONS OF THE AGENCY.

8. CHECK OTHER COMMENTARIES, E.G., LAW REVIEW ARTICLES, HORN-BOOKS, ENCYCLOPEDIAS, THAT COVER THE AGENCY AND SEE IF THE COMMENTARY LEADS TO REFERENCES ON AGENCY REGULATIONS.

FOR THE FEDERAL AGENCIES, THE RESEARCHER MAY NOT BE IN SUCH A DIFFICULT RESEARCH POSITION BECAUSE OF THE FEDERAL REGISTER AND THE CODE OF FEDERAL REGULATIONS. MANY AGENCIES ARE REQUIRED TO PUBLISH THEIR REGULATIONS IN THE MULTI-VOLUME SET OF THE FEDERAL REGISTER. THIS MATERIAL IS LATER CODIFIED IN THE CODE OF FEDERAL REGULATIONS. THE INDICES AND TABLES OF CONTENT TO THESE TEXTS SHOULD BE CHECKED.

Chapter Nineteen

Finding Applicable Case Law

Since the case reporters, in official and unofficial editions, almost never have tables of contents or indices, the researcher must find applicable case law primarily through leads from other texts. The reporter will often have a table of cases at the beginning of the volume. This is helpful only if he has the name of a particular case he is tracking down. The reporter, in the unofficial edition, may have a summary of headnotes listed at the front of the volume, but these are usually not efficient ways to find case law generally because the headnotes refer only to the relatively small number of cases in the volume or pamphlet, and the period of time covered by the volume or pamphlet is usually one year or less. How, then, can the researcher get to applicable case law?

His starting point is again the breakdown of his problem into headings and sub-headings of law and facts. This breakdown is employed in tables of contents and indices of the volumes outlined below in the same manner as it is used for constitutional law, statutory law, and agency regulations, where they exist. The indices and tables are from the following texts:

1. Annotated case reporters. Some courts have their own annotated editions of the reporters. The most extensive annotated case reporter is American Law Reports (ALR), a multi-volume set of reports covering many courts. ALR picks a number of opinions that it feels to be worthy of comment. The entire opinion is printed and is followed by an extensive discussion of the law covered in the opinion with a vast number of citations to court cases on this law. ALR has a sophisticated system of keeping the texts up to date, e.g., separate index volumes, pocket-parts etc.

2. Annotated Statutes. Annotated editions of statutory codes always contain headnote summaries of court cases that have treated the statutory sections. The headnotes follow the individual statutes and are updated in the pocket-parts. This case finding vehicle is probably the most commonly used by researchers.

3. Other Cases. If the reader has found one case on point, or even marginally on point, this case will usually cite other cases in the opinion which can be invaluable leads to case law. If the opinion itself does not provide such references and leads, then shepardizing the case may do so.

4. Digests. The digests covering the courts involved (where the case will probably be brought) should be checked. The digests on

A PARTICULAR STATE WILL USUALLY BE THE MOST APPROPRIATE. THE TABLES OF CONTENT AND INDICES TO THE VOLUMES OF THE DIGEST SHOULD BE CONSULTED.

5. COMMENTARIES. ENCYCLOPEDIAS, REPORTERS -- COMMENTARIES, HORNBOOKS, FORMBOOKS, LAW REVIEW ARTICLES ETC. WILL OFTEN TREAT A PARTICULAR AREA OF THE LAW AND IN SO DOING MAKE EXTENSIVE REFERENCE TO THE CASE LAW IN THIS AREA. VALUABLE LEADS ARE FREQUENTLY FOUND THROUGH SUCH SOURCES.

6. WORDS AND PHRASES.

7. THERE ARE SPECIAL SUBJECT CASE REPORTERS THAT SHOULD BE USED IF THE PROBLEM FALLS INTO THE AREA THEY COVER. FOR EXAMPLE, THERE ARE REPORTERS ON LABOR CASES, STALE TAX CASES, U.S. TAX CASES, INSURANCE CASES, ETC.

CHAPTER TWENTY

LEGAL RESEARCH PROBLEMS

1. USING AS MANY STATUTORY CODES OF DIFFERENT STATES AS ARE AVAILABLE IN YOUR LAW LIBRARY (DO NOT GO BEYOND TEN DIFFERENT CODES, HOWEVER), FIND OUT HOW OLD A MALE AND FEMALE MUST BE IN ORDER TO MARRY WITHOUT CONSENT OF PARENT OR GUARDIAN IN EACH OF THE STATES. (EACH STATE MAY OR MAY NOT HAVE THE SAME AGE REQUIREMENTS).

2. GO TO ANY STATUTORY CODE BOOK THAT HAS A POCKET-PART. STARTING WITH THE FIRST FEW PAGES OF THE POCKET-PART, IDENTIFY THREE DIFFERENT SECTIONS THAT HAVE TOTALLY REPEALED OR PARTIALLY MODIFIED THE SECTION IN THE BODY OF THE TEXT. (IF YOUR FIRST THREE ARE TOTAL REPEAL SECTIONS, KEEP GOING UNTIL YOU COME TO A SECTION THAT WAS MODIFIED). FOR THE SECTIONS THAT HAVE BEEN MODIFIED, DESCRIBE WHAT THE MODIFICATION WAS. (NOTE, THAT YOU MAY HAVE TO COMPARE THE NEW SECTION IN THE POCKET-PART WITH THE OLD SECTION IN THE BODY OF THE TEXT IN ORDER TO BE ABLE TO DESCRIBE WHAT THE MODIFICATION WAS).

3. PICK ONE CASE EXCERPT (IN SMALL PARAGRAPH/HEADNOTE FORM) IN EITHER A DIGEST OR IN AN ANNOTATED CODE (IF YOU USE THE CODE, YOU WILL FIND CASE EXCERPTS AFTER THE STATUTE SECTIONS). READ THE CASE EXCERPT. WRITE DOWN THE CITATION OF THE CASE (PRINTED AT THE END OF THE EXCERPT). USING THIS CITATION, FIND THE CASE ITSELF IN THE REPORTER(S) LISTED IN THE CITATION. READ THE ENTIRE CASE AND COMPARE IT TO THE CASE EXCERPT THAT YOU FOUND IN THE DIGEST OR CODE. (IF YOUR LAW LIBRARY DOES NOT HAVE THE REPORTER THAT YOU NEED, CHECK OTHER CASE EXCERPTS UNTIL YOU FIND ONE WITH A CITATION OF A REPORTER THAT IS AVAILABLE TO YOU).

4. PICK ANY CASE FROM ANY REPORTER THAT MAKES REFERENCE IN THE BODY OF THE OPINION OF ANY STATUTE SECTION. GO TO THE STATUTORY CODE WHERE THAT STATUTE SECTION IS FOUND AND READ THE ENTIRE SECTION IN THE CODE.

Using the law (i.e., constitution, statutes, cases etc.) of the state you are in, research the following problems:

5. JOHN JONES WAS SENT TO A STATE MENTAL HOSPITAL AFTER BEING DECLARED MENTALLY ILL. HE HAS BEEN INSTITUTIONALIZED FOR FIVE YEARS (SINCE 1967). IN HIS OWN VIEW HE IS NOT NOW MENTALLY ILL. THE HOSPITAL DISAGREES. WHAT CAN HE DO? WHAT STEPS MIGHT HE TAKE TO TRY TO GET OUT?

6. PETER THOMAS IS CONVICTED OF PETTY LARCENY. AT THE TIME FOR SENTENCING, HIS ATTORNEY ASKS THE COURT TO GRANT PROBATION IN LIEU OF A PRISON TERM. THE JUDGE REPLIES, "SINCE MR. THOMAS HAS HAD THREE PRIOR FELONY CONVICTIONS (ONE OF WHICH FOR ATTEMPTED RAPE), I COULD NOT GRANT HIM PROBATION EVEN IF I WANTED TO. I

SENTENCE HIM TO A YEAR IN PRISON." ON APPEAL, THE ATTORNEY ARGUES THAT THE JUDGE WAS INCORRECT WHEN HE RULED THAT HE HAD NO POWER TO GRANT PROBATION TO A PERSON WITH THREE PRIOR CONVICTIONS. IS THE ATTORNEY CORRECT?

7. MR. PETERSON INVITES A NEIGHBOR TO HIS HOUSE FOR DINNER. MR. PETERSON'S DOG BITES THE NEIGHBOR. CAN THE NEIGHBOR SUE MR. PETERSON?

PART II
LEGAL WRITING

Chapter Twenty-One

Introduction to Writing

Our society places an inordinantly high premium on written words. "Put it in writing," is the constant demand as if to say that nothing exists unless it is in writing and no one exists unless he can write well. The practice of law is, in large measure, written documentation of facts and written arguments made to convince someone what law should apply to those facts. To be able to function within this environment can be highly stimulating. Most, if not all, lawyers take great pride in the comment that they have produced a document that was "well written." The paralegal will learn to prize this comment as to his work as much as the lawyer. At the same time, for a large number of people, writing is a very painful process.

A number of general observations should be made about writing before attempting the specific writing exercises in the remaining chapters of this text.

1. The threshold problems of grammar and spelling must be dealt with individually and realistically.

For whatever reason, most of the courses that we have taken in English grammar and spelling have not adequately prepared us for writing. This is unfortunate since they are obvious foundations to communication. If our sentence and paragraph structure is clumsy and our spelling constantly requires the reader to wonder about the word being used, we will either have considerable difficulty being understood, or we will so irritate the reader that he may decide that it is not worth the effort reading what we have to say.

Form and the grammatical rules are of peculiar importance in the English language even beyond problems of clarity and style. An item of writing may be clear, but contain so many errors of spelling and grammar that the reader will begin to doubt the competence of the author. The writing may not receive the same consideration from the reader because of its form, notwithstanding its content.

It is recommended that the student supplement whatever course work he previously took in grammar by purchasing a grammar workbook geared to his own level. He should ask someone, such as a former high school teacher, to suggest a workbook that might be appropriate for self-study. A few hours a week devoted to this task could prove to be highly valuable in brushing up on skills once learned and forgotten, as well as on skills that were never learned

AT ALL. FOR SPELLING, THE STUDENT SHOULD HAVE HIS OWN NOTEBOOK, PREFERABLY ONE THAT CAN BE ARRANGED, OR ONE THAT IS ALREADY ARRANGED, ALPHABETICALLY, WITH THE FIRST FEW PAGES ALLOCATED FOR WORDS BEGINNING WITH "A", SOME FOR "B", ETC. EVERYTIME HE COMES ACROSS A WORD THAT IS DIFFICULT FOR HIM TO SPELL HE SHOULD CHECK THE SPELLING IN A DICTIONARY AND ENTER IT IN THE NOTEBOOK. THIS WILL BE PARTICULARLY NECESSARY FOR WORDS THAT ARE NEW TO HIM STEMMING FROM HIS WORK IN THE LAW.

TO SOME, THESE RECOMMENDATIONS MAY APPEAR TO BE DEMEANING. MOST OF US DO NOT WANT TO ADMIT THAT WE NEED HELP IN SUCH BASICS. BETTER TO DEAL WITH THE REALITIES NOW, HOWEVER, THAN TO BE EMBARRASSED LATER.

2. NEVER ALLOW POOR SPELLING AND GRAMMAR TO STAND IN THE WAY OF IMAGINATION AND PERSERVERENCE.

OF COURSE, SOMEONE WORKING IN LEGAL SERVICES IS NOT SIMPLY AN INDIVIDUAL WHO SPELLS PROPERLY AND WHO STRUCTURES HIS SENTENCES ACCORDING TO THE BOOK. FIRST AND FOREMOST, HE IS SOMEONE SKILLED IN ASPECTS OF THE PRACTICE OF LAW, SOMEONE WHO IS WILLING AND ABLE TO BRING TO PROBLEM RESOLUTION WHAT IS INDISPENSABLE, NAMELY, INSIGHT AND IMAGINATION. TO EXERCISE THESE TALENTS REQUIRES DISCIPLINE AND A WILLINGNESS TO GO OUT ON A LIMB, TO SUBJECT ONESELF TO THE SCRUTINY OF OTHERS. MANY SHY AWAY FROM WHAT IT TAKES TO DEVELOP THIS DISCIPLINE AND ARE AFRAID OF THE SCRUTINY. THESE, OF COURSE, ARE MATTERS SEPARATE FROM GRAMMAR AND SPELLING EXCEPT TO THE EXTENT THAT AN INDIVIDUAL USES HIS WEAKNESS IN GRAMMAR AND SPELLING AS AN EXCUSE TO KEEP HIM FROM EVEN ATTEMPTING WRITING TASKS THAT WILL BE EVALUATED BY THE TESTS OF DISCIPLINE AND IMAGINATION.

3. DEVELOP AN INCLINATION TO BEGIN.

HOW OFTEN HAVE YOU HEARD IT SAID (OR HOW OFTEN HAVE YOU SAID), "I HATE TO WRITE TERM PAPERS"? THE BIGGEST PROBLEM FACED BY SUCH HATERS IS BEGINNING. A VAST NUMBER OF MANHOURS IS WASTED AS THE PROSPECTIVE AUTHOR SITS BEFORE A PIECE OF PAPER WONDERING HOW TO BEGIN. THIS TIME SPAN IS EUPHEMISTICALLY REFERRED TO AS "PLANNING TIME," BUT MORE OFTEN THAN NOT, IT IS FILLED BY THE CLASSIC RESPONSE OR NON-RESPONSE TO THE BLANK PAPER'S UNHOLY CHALLENGE TO THE INDIVIDUAL, "I DARE YOU TO BEGIN!" WHILE THE TENSIONS BETWEEN MAN AND PAPER MAY NOT ALWAYS BE THIS DRAMATIC, THE FACT IS THAT MANY PEOPLE HAVE GREAT DIFFICULTY BEGINNING. THE MOST SOPHISTICATED ADVICE THAT CAN BE GIVEN TO SUCH NON-BEGINNERS IS TO BEGIN. HE MUST PUSH HIMSELF IN THIS DIRECTION, PARTICULARLY IF HE IS BEING ASKED TO WRITE ABOUT SOMETHING NEW TO HIM. ONCE HE HAS DEVELOPED AN INCLINATION TO BEGIN, IT WILL BECOME RELATIVELY EASY FOR HIM TO LAUNCH INTO THE TASK OF WRITING LATER ON. THE FIRST STEP IS TO DEAL WITH THE NOW.

4. WRITING CAN BE A VEHICLE OF DISCOVERING WHAT YOU WANT TO WRITE ABOUT.

THE PRECEDING POINT IS NOT MEANT TO DISCOUNT THE VALIDITY AND IMPORTANCE OF PLANNING ONE'S WRITING IN ADVANCE. THERE ARE SOME INDIVIDUALS WHO LIVE BY THE FOLLOWING PHILOSOPHY: "IF YOU DON'T KNOW WHERE YOU'RE GOING, YOU'LL PROBABLY END UP SOME WHERE ELSE." OFTEN SUCH INDIVIDUALS WORK BEST BY CAREFULLY THINKING ABOUT AND OUTLINING WHAT THEY WANT TO SAY BEFORE THEY BEGIN TO WRITE. THIS CAN BE EFFECTIVE SO LONG AS THE TIME FOR PLANNING IS NOT A TIME FOR STALLING.

THERE IS ANOTHER EQUALLY VALID PHILOSOPHY OF WRITING. THE WRITER BRIEFLY MAPS OUT IN ROUGH FORM WHAT HE WOULD LIKE TO SAY. SOON AFTER HE BEGINS TO WRITE, HOWEVER, A DIFFERENT THOUGHT, A DIFFERENT APPROACH, INDEED, AN ALTOGETHER DIFFERENT MAP MAY OCCUR TO HIM. HE FINDS THAT THE ACT OF EXPRESSING HIMSELF IS A SPRING-BOARD OF CREATIVITY. MORE INSIGHTS COME TO SUCH AN INDIVIDUAL AFTER HE HAS PUT HIS PEN TO PAPER THAN WHEN HE WAS PLANNING IN ADVANCE. WHILE THINKING AND PLANNING, HE IS ENGAGED IN AN ABSTRACT ACTIVITY; WHILE WRITING WORDS ON PAPER HE BEGINS TO CONFRONT SOMETHING CONCRETE. THE WORDS TEND TO "SHOUT" BACK RESPONSES TO THE WRITER. THE MORE HE WRITES THE MORE REACTIONS HE GETS. HE MAY FIND THAT HE NEEDS TO START ALL OVER TO TEST A DIFFERENT APPROACH. IN SHORT, THE PHYSICAL ACT OF WRITING CAN BE A DISCOVERY PROCESS.

TO BE SURE, WRITING IN THIS WAY CAN PRODUCE SOME DISORGANIZED WRITING AS THE WRITER SHIFTS FROM POINT TO POINT WHILE RESPONDING TO WHAT HE HAS ALREADY WRITTEN. SUCH WRITING IS PERFECTLY PROPER AS A FIRST DRAFT. AFTER HAVING COMPLETED AS MUCH AS HE WANTS TO SAY OR CAN SAY, HE GOES BACK TO TAKE OUT POINTS HE BEGAN WITH, BUT WHICH WERE DISCARDED AS HE PROCEEDED. AS INDICATED, HE MAY DECIDE UPON A COMPLETE RE-WRITING OF THE FIRST DRAFT. IT IS USUALLY MUCH EASIER FOR THE WRITER TO GO BACK TO HIS FIRST DRAFT TO RE-WORK IT THAN TO PRODUCE THE INITIAL DRAFT.

5. IT IS CRITICAL FOR THE WRITER TO KNOW WHY HE IS HAVING DIFFICULTY WRITING.

THERE ARE A NUMBER OF REASONS WHY AN INDIVIDUAL COULD BE HAVING DIFFICULTY IN HIS WRITING ASSIGNMENTS.

(A) HE MAY NOT UNDERSTAND WHAT OBJECTIVE(S) HIS WRITING IS DESIGNED TO ACHIEVE. HIS SUPERVISORS MAY HAVE GIVEN HIM CONFLICTING INSTRUCTIONS ON WHAT TO WRITE, OR WORSE, HIS SUPERVISORS MAY NOT FULLY UNDERSTAND OR KNOW WHAT THEY WANT. THIS STATE OF AFFAIRS CAN LEAVE THE WRITER IN LIMBO. ONE CAN HARDLY EXPECT A WRITER TO BE IMAGINATIVE ON A WRITING ASSIGNMENT THAT HE DOES NOT UNDERSTAND. THE WRITER AND HIS SUPERVISOR MUST GET ON THE SAME WAIVE LENGTH BEFORE ANYTHING CAN BE ACCOMPLISHED.

(B) HE MAY NOT HAVE A SUFFICIENT UNDERSTANDING OF THE LAW UNDERLYING THE WRITING HE IS BEING ASKED TO DO. IT IS IMPOSSIBLE FOR A WRITER TO COMPILE A LIST OF ASSETS AND LIABILITIES OF A BANKRUPTCY CLIENT, FOR EXAMPLE, UNLESS THE WRITER KNOWS WHAT ASSETS AND LIABILITIES ARE. HE MAY HAVE TO UNDERTAKE SOME BRIEF RESEARCH IN THE AREA, AT THE VERY LEAST TO FAMILIARIZE HIMSELF WITH THESE BASIC CONCEPTS OF BANKRUPTCY LAW. IT IS NOT INCONCEIVABLE FOR EVERY WRITING ASSIGNMENT TO BE THE OCCASION FOR NEW LEARNING EXPERIENCES IN THIS WAY.

(C) THE WRITER MAY SIMPLY LACK THE SELF-CONFIDENCE TO WRITE. WE HAVE ALREADY DEALT IN PART WITH THIS PROBLEM AND IT WILL REMAIN WITH US THROUGHOUT THE TEXT. THE SUGGESTIONS OUTLINED HEREIN ARE DESIGNED TO ASSIST THE STUDENT TO OVERCOME THIS NATURAL AND SOMEWHAT COMMON FEELING.

6. AN EXAMPLE IS AN EXAMPLE; A SAMPLE IS A SAMPLE.

AS BASIC AS THIS PRINCIPLE IS, IT IS OFTEN VIOLATED IN PRACTICE. QUITE PROPERLY, THE WRITER SEARCHES THE OFFICE FOR SAMPLE FORMS, OLD PLEADINGS AND BRIEFS IN ORDER TO GET A GENERAL IDEA OF HOW OTHERS HAVE TACKLED WRITING ASSIGNMENTS SIMILAR TO HIS. THIS PRACTICE CAN SAVE TIME AND IT ENCOURAGES UNIFORMITY WHERE UNIFORMITY IS ESSENTIAL. QUITE IMPROPERLY, HOWEVER, THE WRITER TENDS TO SUBSTITUTE THE SAMPLE WRITING FOR HIS OWN THINKING. THE TEMPTATION TO DO THIS CAN BE OVERWHELMING, PARTICULARLY FOR SOMEONE NEW TO THE LAW. WHAT THE INDIVIDUAL SO INCLINED MUST UNDERSTAND IS THAT EACH FACT SITUATION IS USUALLY UNIQUE, DEMANDING FULL ATTENTION TO ITS OWN PECULIARITIES. THE WATCHWORD IS CAUTION. USE THE SAMPLES, BUT RECOGNIZE THEIR LIMITATIONS AND THE PARAMOUNT NEED FOR ADAPTATION TO NEW FACTS. MANY A WRITER HAS GOTTEN BURNT BY A BLIND UTILIZATION OF OTHER WRITINGS.

7. WHILE WRITING, ASSUME THAT THE AUDIENCE KNOWS NOTHING ABOUT THE PROBLEM YOU ARE WRITING ABOUT OR THE OBJECTIVE OF YOUR WRITING; AND ASSUME THAT HE KNOWS LITTLE OR NOTHING ABOUT THE LAW UNDERLYING YOUR WRITING.

IT MAY BE SOMEWHAT SURPRISING TO LEARN THAT SOME OF THE BEST WRITING IS ABSOLUTELY BASIC IN TERMS OF DEFINING, STEP BY STEP, WHAT IS BEING SAID, AND, INDEED, OF LEADING THE READER BY THE HAND THROUGH THE WRITING. THE CARDINAL SIN IN WRITING IS TO BE ELLIPTIC, TO JUMP FROM STEP TWO TO STEP FOUR, AND ASSUME THAT THE READER KNOWS WHAT STEP THREE IS EITHER BECAUSE OF HIS GENERAL BACKGROUND INFORMATION IN THE LAW OR BECAUSE OF HIS KNOWLEDGE OF THE PROBLEM BEING WRITTEN ABOUT. OCCASIONALLY THE WRITER IS CORRECT IN THIS ASSUMPTION; MORE OFTEN THAN NOT, HE IS INCORRECT. IN MOST SITUATIONS, YOU SHOULD ASSUME THE FOLLOWING FACTS ABOUT THE PERSON THAT ASKED YOU TO DO THE WRITING:

a. He is a very busy person.
b. He does not remember every detail of the problem you are working on.

c. He does not have an immediate and comprehensive understanding of every area of the law that underlies the problems you are working on.

d. He is not the only person who will be reading and relying upon your writing.

e. The first three assumptions (a, b, c) apply equally well, if not more so, to others who will be reading the document you have written.

DOES THIS MEAN THAT EVERYTHING WRITTEN MUST BE AT LEAST 100 PAGES LONG? CERTAINLY NOT. IT DOES MEAN, HOWEVER, THAT HE MUST BE COMPREHENSIVE. THIS IS NOT INCONSISTENT WITH BEING SELECTIVE IN DECIDING WHAT TO INCLUDE. NOR DOES IT MEAN THAT HE MUST BE UNDULY REPETITIVE. ALL OF THE PIECES MUST BE INCLUDED; STEP BY STEP. THE WRITING SHOULD BE A SELF-CONTAINED COMPOSITE GOVERNED BY THE OBJECTIVES YOU WERE TRYING TO ACHIEVE.

WHAT ABOUT LENGTH? OBVIOUSLY SOME WRITING ASSIGNMENTS CAN BE EXTREMELY SHORT WITHOUT SACRIFICING COMPREHENSIVENESS. FOR THOSE THAT ARE LONGER, THE WRITER SHOULD WRITE A ONE OR TWO PAGE SUMMARY SHEET TELLING THE READER WHAT IS INCLUDED IN THE WRITING AND WHAT RESULTS YOU HAVE REACHED. WHEN THE WRITER DEEMS IT NECESSARY TO EXPAND ON CERTAIN POINTS AND SUCH EXPANSION WOULD CONFLICT WITH THE FLOW OF THE DISCUSSION, HE SHOULD CONSIDER USING AN APPENDIX AT THE END OF THE WRITING TO COVER THE POINTS THAT NEEDED EXPANSION.

8. WRITING IS ADVOCACY.

EVERYTHING THAT IS WRITTEN MUST BE CALCULATED TO CONVINCE SOMEONE OF ONE OR MORE OF THE FOLLOWING:

A. THAT YOU UNDERSTAND THE PROBLEM YOU ARE WRITING ABOUT;
B. THAT YOU HAVE GRASPED THE ISSUES IN AND OBJECTIVES OF YOUR WRITING;
C. THAT WHAT YOU HAVE STATED TO BE AN UNKNOWN, AN OPTION OR A QUESTION IS IN FACT SO;
D. THAT YOU HAVE DONE A THOROUGH JOB IN ANALYZING THE PROBLEM;
E. THAT THE CONCLUSIONS YOU HAVE REACHED ARE VALID.

HENCE EVERY READER OF YOUR WRITING, WHETHER HE BE YOUR SUPERVISOR OR A JUDGE, MUST BE CONVINCED OF THE CREDIBILITY OF WHAT YOU HAVE WRITTEN. YOU SHOULD SET A HIGH STANDARD OF CREDIBILITY FOR YOURSELF, FOR OTHERS WILL ASSESS YOU, AND SHOULD ASSESS YOU, BY A HIGH STANDARD.

9. FLEXIBILITY AND A TOLERANCE FOR FRUSTRATION ARE KEY.

OCCASIONALLY THE WRITER HAS THE LUXURY OF PREPARING HIS DOCUMENT IN A SETTING WHERE THE FACTS ARE CLEAR AND WHERE THE TIME

AVAILABLE TO DO HIS WORK IS ADEQUATE. IN MOST SITUATIONS, THIS IS NOT TRUE. IN THE MIDDLE OF AN ASSIGNMENT THE FACTS CHANGE, THE SUPERVISOR CHANGES HIS MIND ABOUT THE OBJECTIVE OF ASSIGNMENT OR HE SCRAPS THE PROJECT ALTOGETHER. DUE DATES CREATE PRESSURE; AN ASSIGNMENT GIVEN TODAY WAS DUE YESTERDAY. IN SUCH AN ENVIRONMENT, THE WRITER MUST HAVE A COOL HEAD. HE MUST BE PREPARED TO SHIFT COURSE WHEN NECESSARY. THIS IS NOT TO SAY THAT HE SHOULDN'T EXERT PRESSURE ON HIS SUPERVISOR FOR SOME STABILITY SO THAT HE CAN MAINTAIN HIS SANITY. THE POINT IS THAT HE MUST RECOGNIZE THAT SOMETIMES THE ORDER OF THE DAY IN A LAW OFFICE IS CHAOS; EVERYTHING IS DEALT WITH ON A CRISIS BASIS. AS A FUNCTIONING UNIT, THE OFFICE MAY BE UNDER WEAK MANAGEMENT, AND THE WRITER SHOULD BE LOOKING FOR OPPORTUNITIES TO MAKE CONSTRUCTIVE SUGGESTIONS FOR CHANGE. IN THE MEANTIME, HE SHOULD UNDERSTAND THAT FRUSTRATION IS FREQUENTLY BUILT INTO THE OPERATION OF THE LEGAL SYSTEM. SUCH AN UNDERSTANDING WILL LEAD TO A HEALTHY TOLERANCE FOR THE FRUSTRATION WITHOUT SACRIFICING THE WRITER'S RESPONSIBILITY TO ARRANGE HIS OWN AFFAIRS TO MINIMIZE THE FRUSTRATION AND TO PROPOSE CHANGE TO OTHERS.

Chapter Twenty-Two

Kinds of Legal Writing

There are a number of different kinds of writing within a law office:

1. Letters
2. Instruments (e.g., contracts, deeds, will, bond lease)
3. Pleadings
4. Memoranda
5. Briefs

Instrument drafting requires great precision. The same is true of court pleadings. The writer often must have a thorough knowledge of substantive and procedural law before he can prepare a final draft of instruments or of pleadings. Of course, there are standard forms that are available for many instruments and pleadings which require a minimal amount of data fill-in. It would be tempting to argue that for this kind of writing extensive knowledge of the law would not be necessary. The problem, however, is that the writer can never be positive in advance that the standard form will completely fit the facts of a particular client. Adjustments in the standard form may be necessary.

A memorandum is an in-house (i.e., intended primarily for personnel in the law office) analysis of a legal problem or of some aspect of a legal problem. It's distinguishing characteristic is that it presents both sides of a problem. It may be argumentative in that it tries to convince the reader of a particular position, but in so doing, it presents the pros and cons of that position. A brief, on the other hand, is a written argument presented to a court in order to persuade the court of the client's side of the case. The brief does not dwell on the negative aspects of the client's case unless it is done as a matter of strategy to bolster other aspects of the argument. Normally, the only mention of "negative" matters in a brief comes when the writer is trying to demonstrate that they are not negative at all.

Our main concentration in Part II will be on the memorandum because it is often prepared preliminary to the final draft of instruments, pleadings and briefs. A law student or paralegal may be asked to write memoranda on legal problems that must be resolved before the instrument, pleading or brief is sent out.

CHAPTER TWENTY-THREE

ORGANIZATION

WE NOW TURN TO WRITING EXERCISES DESIGNED TO IDENTIFY EFFECTIVE WRITING TECHNIQUES. THE REMAINDER OF THIS TEXT IS STRUCTURED AROUND A SERIES OF PROBLEMS, MOST OF WHICH ARE FOLLOWED BY SUGGESTED RESOLUTIONS IN ITALICS. THE STUDENT IS URGED TO ATTEMPT THE PROBLEM BEFORE LOOKING AT THE SUGGESTED RESPONSE. IN FACT, WHENEVER THE WORDS "SUGGESTED RESPONSE" APPEARS, A PIECE OF PAPER SHOULD BE USED TO COVER WHATEVER FOLLOWS THESE WORDS SO THAT THE STUDENT WILL NOT BE DISTRACTED FROM THE TASK OF THINKING OUT HIS OWN RESPONSE TO THE PROBLEM BEFORE LOOKING AT SOMEONE ELSE'S OPINION OF HOW THE PROBLEM MIGHT BE HANDLED. NO REPRESENTATION IS MADE THAT THE ANSWERS PROVIDED IN THE SUGGESTED RESPONSES ARE IN ANY WAY DEFINITIVE. THE STUDENT SHOULD BE CONSTRUCTIVELY CRITICAL OF THESE ANSWERS IN COMPARING THEM WITH HIS OWN AND WITH OTHER OPTIONS.

THERE ARE A NUMBER OF WAYS IN WHICH A LAW STUDENT OR PARALEGAL CAN ORGANIZE MEMORANDA. SOME OF THE ORGANIZATION OPTIONS AVAILABLE ARE AS FOLLOWS (NOTE THAT IN MANY INSTANCES, A SINGLE MEMO WILL COMBINE A VARIETY OF OPTIONS):

1. CHRONOLOGICALLY ACCORDING TO THE CLIENT'S FACTS.

THE WRITING BEGINS WITH WHAT HAPPENED FIRST TO THE CLIENT (OR WHAT THE CLIENT SAYS HAPPENED FIRST). THE NEXT EVENT IN THE CLIENT'S STORY IS THEN COVERED UNTIL ALL SEGMENTS OF THE CLIENT'S STORY THAT ARE RELATIVE TO THE OBJECTIVE OF THE WRITING ARE TREATED CHRONOLOGICALLY.

2. CHRONOLOGICALLY ACCORDING TO THE WRITER'S SCHEDULE.

THE WRITER FIRST DESCRIBES WHEN HE GOT THE PROBLEM AND WHAT HE DECIDED TO DO. HE THEN PROVIDES THE READER WITH A CALENDAR ACCOUNT (E.G., DAY BY DAY, WEEK BY WEEK) OF WHAT HE DID WITH RESPECT TO THE LEGAL PROBLEM ASSIGNED TO HIM.

3. MOVE FROM THE MOST IMPORTANT TO THE LEAST IMPORTANT COMPONENT OF THE PROBLEM; OR VICE VERSA.

MOST CLIENT PROBLEMS CAN BE SUB-DIVIDED INTO A HIERARCHY OF SUB-PROBLEMS. SOME FACTS IN THE CASE ARE CLEARLY MORE SIGNIFICANT THAN OTHERS. THE WRITING CAN BEGIN WITH THE MOST SIGNIFICANT

FACTS OR THE MOST CRUCIAL PROBLEM AND MOVE ON TO THE OTHER FACTS AND PROBLEMS IN DESCENDING ORDER OF IMPORTANCE.

THE ORDER CAN BE REVERSED. THE WRITING CAN BEGIN WITH THE LEAST SIGNIFICANT (ALTHOUGH STILL RELEVANT) FACTS AND PROBLEMS AND MOVE TO THE MOST SIGNIFICANT IN ASCENDING ORDER.

4. MOVE FROM THE COMPONENTS OF THE PROBLEM THAT YOU ARE MOST SURE OF TO THOSE THAT ARE THE MOST UNCLEAR; OR VICE VERSA.

HERE THE ORGANIZING PRINCIPLE IS WHAT THE WRITER KNOWS OR DOES NOT KNOW ABOUT THE PROBLEM. IN HIS MIND, SOME ISSUES IN THE PROBLEM CAN BE RESOLVED RELATIVELY EASY EITHER BECAUSE HE HAS HANDLED SIMILAR ISSUES BEFORE OR BECAUSE HE KNOWS WHERE TO TURN TO FIND ANSWERS FAIRLY QUICKLY. THEN THERE ARE THE ISSUES THAT POSE THE GREATEST DIFFICULTY FOR THE WRITER FOR WHATEVER REASON. THE WRITER CAN BEGIN WITH ISSUES WITH WHICH HE IS MOST COMFORTABLE AND PROCEED TO THOSE THAT REQUIRED HIM TO DO A GREAT DEAL OF THINKING AND RESEARCH BEFORE HE COULD COME TO ANY CONCLUSIONS. OF COURSE, THE ORDERING CAN BE REVERSED SO THAT HE STARTS WITH THE LATTER KIND OF ISSUE AND FINISHES WITH ISSUES THAT CAUSED HIM THE LEAST CONCERN.

NOTE THE DISTINCTION BETWEEN THIS ORGANIZING PRINCIPLE AND THAT LISTED IN NUMBER "3" ABOVE. IN "3" THE ORDERING WAS DICTATED BY THE ISSUES THAT WERE MOST CRITICAL TO THE CLIENT'S CASE. IN "4" THE STANDARD IS HOW MUCH WORK THE WRITER MUST DO BEFORE HE CAN TALK INTELLIGENTLY ABOUT THE ISSUES NO MATTER HOW CRITICAL OR SUBSIDIARY THEY ARE TO THE CLIENT'S PROBLEM.

5. START WITH THE PRECONDITIONS.

IN MOST SITUATIONS, A WRITER WILL NOT BE ABLE TO MAKE HIS READER UNDERSTAND A PARTICULAR TOPIC UNLESS AND UNTIL HE HAS EXPLAINED CERTAIN MATTERS IN ADVANCE. GRASPING ONE TOPIC IS A PRECONDITION TO GRASPING ANOTHER. THE WRITING IS ORGANIZED SO THAT NO TOPIC IS TREATED UNTIL OTHER TOPICS ARE TREATED IN LOGICAL SEQUENCE.

6. STATE THE HYPOTHESIS AT THE OUTSET.

AN HYPOTHESIS IS A STATEMENT OF A PROBLEM WITH A TENTATIVE CONCLUSION. FOR EXAMPLE, "AN INDIVIDUAL WHO ACCEPTED AND USED GOODS SENT TO HIM UNSOLICITED IN THE MAIL PROBABLY DOES NOT HAVE TO PAY FOR THEM." THE PURPOSE OF THE WRITING IS TO PRESENT AN ANALYSIS WHICH WILL PROVE OR DISPROVE THE CONCLUSION OF THE HYPOTHESIS. BY CLEARLY LABELING THE STATEMENT AS AN HYPOTHESIS, THE WRITER IS PUTTING THE READER ON NOTICE THAT HE IS NOT BEING DOGMATIC OR DEFINITIVE ABOUT THE FINAL ANSWER. HE IS SIMPLY STATING THE PROBLEM IN THE FORM OF A CONCLUSION THAT MAY OR MAY NOT PROVE TO BE TRUE AFTER THE WRITER COMPLETES HIS RESEARCH AND ANALYSIS

WHICH MAY BE CONTAINED IN A NUMBER OF MEMORANDA OVER A PERIOD OF TIME. "THE WRITER, IN EFFECT, IS SAYING, 'THIS IS MY STARTING POINT,' 'THIS IS WHAT I THINK IS THE REALITY, BUT I AM NOT SURE YET; FOLLOW ME IN THIS MEMORANDUM (AND IN LATER ONES) AND I WILL TELL YOU HOW I WENT ABOUT TESTING THE VALIDITY OF MY STARTING POINTS AND OF MY INITIAL CONCEPTION OF HOW THE LAW APPLIES TO THIS PROBLEM; I HAVE AN OPEN MIND, HOWEVER, ABOUT THE ENTIRE CASE; I WILL DO MY BEST TO TRY TO SUPPORT THE TENTATIVE CONCLUSION I BEGAN WITH, BUT I AM WILLING TO ABANDON IT IF THE RESEARCH AND ANALYSIS REQUIRES ME TO DO SO; I AM STATING THE HYPOTHESIS AT THE OUTSET SO THAT YOU HAVE A CLEAR IDEA OF WHERE MY HEAD IS AND WHAT PREJUDICES I BEGAN WITH; I AM NOT GOING TO LET MY PREJUDICES GET THE BEST OF ME AND CONTROL MY THOUGHT PROCESS AND MY WRITING, HOWEVER, BECAUSE I FULLY UNDERSTAND THE DISTINCTION BETWEEN AN HYPOTHESIS AND A FINAL CONCLUSION."

OTHER ORGANIZING PRINCIPLES MAY OCCUR TO YOU. MOST WRITING REPRESENTS A COMBINATION OF PRINCIPLES. SINCE THE COMBINATION IS USUALLY HAPHAZARD, HOWEVER, THE WRITING SUFFERS. WRITING NEEDS TO HAVE A FOCUS AND ONE OF THE BEST WAYS TO ACHIEVE IT IS TO BE CONSCIOUS OF, AND CONSISTENT IN, THE ORGANIZING PRINCIPLES EMPLOYED.

PROBLEM (1)

YOU HAVE JUST COMPLETED AN INITIAL CLIENT INTERVIEW DURING WHICH YOU TOOK A NUMBER OF NOTES. AFTER THE CLIENT LEAVES, YOU BEGIN TO WRITE A MEMO COVERING WHAT HAPPENED DURING THE INTERVIEW. ORGANIZE THESE NOTES USING THE FIRST (1) ORGANIZING PRINCIPLE LISTED ABOVE. REPEAT THE TASK, USING THE FIFTH (5) ORGANIZING PRINCIPLE. (DO NOT READ THE SUGGESTED RESPONSES UNTIL AFTER YOU HAVE ATTEMPTED THE ASSIGNMENT YOURSELF ON A SEPARATE PIECE OF PAPER). YOUR NOTES FROM THE INTERVIEW ARE AS FOLLOWS:

> MRS. MARY PETERSON, 441 7TH AVENUE, APT. 7D. 324-9182 (HOME), 349-3000 (WORK). EVICTION PAPERS RECEIVED IN MAIL, 3/9/74. NON--PAYMENT ALLEGED. CLIENT HAS OFTEN COMPLAINED ABOUT LACK OF HEAT. CHILD (AGE 7) OF CLIENT WAS INJURED ON REAR GATE OF BUILDING LAST JANUARY. CLIENT COMPLAINED IN VAIN TO GET THE GATE REMOVED OR FIXED. CLIENT PAYS RENT BY CHECK, BUT SOMETIMES IN CASH. NOT SURE IF ALWAYS GOT A RECEIPT. RENT DUE FIRST OF MONTH. TWO YEAR LEASE, SEVEN MONTHS REMAINING. LAST MONTH'S RENT WAS DUE 2/1/74. CLIENT PAID BY BANK MONEY ORDER THROUGH MAIL ON 2/3/74 OR 2/4/74, BUT

CALLED LANDLORD (ACE REALTY CO. 324 MAIN ST. 732-1043) A WEEK BEFORE AND ASKED IF THE RENT COULD BE MAILED A FEW DAYS LATE. HE SAID "YES, GO AHEAD." CLIENT THINKS LANDLORD WANTS HER OUT BECAUSE OF HER COMPLAINTS. NOT SURE IF SHE HAS THE MONEY ORDER STUB AT HOME. WILL CHECK. NEXT COURT DATE, 3/23/74. DATE OF INTERVIEW 3/14/74.

SUGGESTED RESPONSE (1)

Chronological Ordering

Client's Name : Mrs. Mary Peterson
Address : 441 7th Avenue, Apt. 7D
Phone : 324-9182 (home) 349-3000 (work)
Interviewer : Brenda Smith, Paralegal
Date of Interview: 3/14/74

General nature of problem: landlord-tenant (eviction) and possible tort (injury to child).

Client has a two year lease with Ace Realty Co. (324 Main Street, 732-1043) entered 10/1/72 (expiring 9/30/74). Client pays rent by check, money order or cash. Not sure if she has all the receipts. Client has often complained to the landlord about heat services.

On 1/74, her seven year old child was injured on rear gate of building. Gate is apparently in state of disrepair.

On or about 1/27/74, client called landlord to ask if the February (due 2/1/74) rent could be mailed a few days late. He replied, "yes, go ahead." She paid by mail (bank money order) on 2/3/74 or 2/4/74. (She will check to see if she has the receipt).

3/9/74: client received in mail eviction papers alleging non-payment of February rent. Next court date is 3/23/74.

Client thinks that the landlord wants to evict her because of her complaints about the building.

Ordering by Preconditions

Client's Name : Mrs. Mary Peterson
Address : 441 7th Avenue, Apt. 7D
Phone : 324-9182 (home) 349-3000 (work)
Interviewer : Brenda Smith, Paralegal
Date of Interview: 3/14/74

General nature of problem: landlord-tenant (eviction) and possible tort (injury to child).

Client has been complaining to landlord (Ace Realty Co. 334 Main St. 732-1043) about heat services. Landlord also knows that on 1/74 her daughter was injured on a gate in the rear of the building (and probably fears that she will sue him about it). Client believes the landlord wants her out of the building because of these factors. She has received eviction papers alleging non-payment of rent.

She has a two year lease (running from 10/1/73 to 9/30/74) with the rent due the first of each month. She pays the rent by check, money order or cash; she is not sure if she has all the receipts. Last February's rent was due on 2/1/74. On or about 1/27/74 she called landlord to ask if the February rent could be mailed a few days late. He replied "yes, go ahead." On 2/3/74 or 2/4/74 she mailed the landlord a bank money order. (She will check at home to see if she has the receipt). On 3/9/74, she received an eviction notice in the mail alleging non-payment of February rent. The next court date is 3/24/74.

PROBLEM (2)

IF YOU WERE WRITING A LEGAL MEMORANDUM ON THE FACTS OF PROBLEM (1) WHAT ARE SOME OF THE HYPOTHESES THAT YOU COULD HAVE?

SUGGESTED RESPONSE (2)

a. the evidence will establish that the client validly paid her February rent.
b. the evidence will establish that the landlord is trying to evict the client because of her valid complaints about the condition of the building.
c. a landlord who seeks to evict a tenant in retaliation for valid complaints made about the condition of the building is acting illegally.

PROBLEM (3)

IN YOUR MEMORANDUM, MAKE A LIST OF ALL THE FACTUAL QUESTIONS THAT OCCUR TO YOU IN THE PETERSON CASE.

SUGGESTED RESPONSE (3)

a. Did the client send and did the landlord receive the February rent?
b. What happened to the child on 1/74?
c. Is the landlord trying to retaliate against the tenant for her complaints?

PROBLEM (4)

LIST THE ABOVE FACTUAL QUESTIONS IN THE ORDER OF THE FACTS THAT YOU THINK ARE THE MOST IMPORTANT TO THE CLIENT'S CASE.

SUGGESTED RESPONSE (4)

(a)
(b)
(c)

PROBLEM (5)

IN YOUR MEMORANDUM, MAKE A LIST OF ALL THE LEGAL QUESTIONS THAT OCCUR TO YOU IN THE PETERSON CASE.

SUGGESTED RESPONSES (5)

(a) Does the client have an action in tort against the landlord over the daughter's injury?
(b) Did the landlord's statement "yes, go ahead" constitute a valid waiver of the tenant's duty to pay the rent on the first of each month?
(c) Can the tenant sue the landlord for lack of services in the same action brought by the landlord for non-payment e.g., as a defense? as a counterclaim?
(d) Can the tenant withhold all future rent payments until services are imporved?
(e) Can the tenant be evicted while the law office is gathering the necessary records to show that the rent was validly paid?

(f) Was the receipt in the mail of the eviction notice valid service of process?

(g) Is the tenant in violation of her lease obligation to pay rent?

(h) Can a landlord who is disturbed about a tenant's complaints about the condition of the building evict the tenant for this reason?

PROBLEM (6)

LIST THE ABOVE LEGAL QUESTION IN THE ORDER IN WHICH YOU THINK ARE MOST IMPORTANT TO THE CLIENT'S CASE.

SUGGESTED RESPONSE (6)

(e)
(g)
(f)
(b)
(h)
(a)
(c)
(d)

Chapter Twenty-Four.

Memorandum Format: Facts/Issues/Analysis/Counter-analysis/Conclusions/Unknowns/ Next Step

A seven step memorandum format is suggested here. To be sure, you will eventually want to adopt a format that will best suit your style. Until you reach that point, you may want to try the seven step format.

These seven steps should not be confused with the organization structures presented above in Chapter Twenty-Three *supra*. No matter what organization structure is adopted, each unit within the structure can be and should be presented in seven parts. A client's problem will usually have more than a few sub-problems contained within it. Each sub-problem should be presented in seven parts.

The seven parts are as follows:

1. *Facts*

Following the initial interview of the client, a set of facts should have been reduced to writing. As the office continues to work with the client, new facts are added, some change, others disappear. Keep in mind also that most, if not all, of the facts are allegations of facts until they have been substantiated to the extent sufficient to convince a court of law that the facts are true. Hence at all times, facts are in a state of flux; considerable flexibility will be required to cope with this factor. Of course, there are certain kinds of facts, such as the client's name, that you can assume will be accepted by a court as true, so long as the case does not involve a divorce or will action in which the name of the alleged spouse or potential beneficiary is in issue.

Facts can be clustered into units, each one of which raises its own set of issues, requires it own analysis, counteranalysis, conclusions, *etc*. You must become skilled in the dissection of facts into such units. Each unit of facts should be treated separately in the memorandum (the first unit labelled "A" or "I", the second, "B" or "II" *etc*).

2. *Issues*

Every set or unit of facts presents issues of two kinds:

A. WHAT WILL IT TAKE TO BE ABLE TO PROVE (VIA ADMISSIBLE EVIDENCE) THE FACTS TO BE TRUE IN A COURT OF LAW OR IN AN AGENCY HEARING?

B. WHAT IS THE LAW GOVERNING THOSE FACTS ASSUMING THAT THEY WILL BE ACCEPTED AS TRUE BY A COURT OR AGENCY HEARING OFFICE?

A LEGAL ISSUE, THEREFORE, IS SIMPLY A QUESTION THAT MUST BE RESOLVED BY A COURT OR AN AGENCY HEARING OFFICER. OF COURSE, MANY LEGAL MATTERS NEVER GET TO COURT OR TO AN AGENCY HEARING. HENCE THE PRIMARY AUDIENCE FOR ARGUMENTS ON LEGAL ISSUES IN SUCH CASES IS THE ATTORNEY FOR THE OTHER SIDE, THE OPPOSING PARTY, IF HE IS NOT REPRESENTED BY COUNSEL, OR A GOVERNMENT OFFICIAL (OTHER THAN THE HEARING OFFICER). THE ARGUMENTS MADE TO THESE INDIVIDUALS IS THAT IF THE FACTS AND ISSUES EVER GOT BEFORE A COURT OR AGENCY HEARING OFFICER, THE LAW THAT WOULD BE APPLIED WOULD BE SUCH AND SUCH. THE GOAL IS TO CONVINCE THESE INDIVIDUALS OF THE STRENGTH OF THIS SPECULATION IN ORDER TO PERSUADE THEM TO FOLLOW A COURSE OF CONDUCT, (OR TO REVERSE A PREVIOUS COURSE OF CONDUCT), THAT WOULD BE MOST BENEFICIAL TO THE CLIENT OF THE OFFICE. IN SHORT, THE OFFICE IS USING THE ARGUMENTS ON THE ISSUES FOR BARGAINING LEVERAGE.

3. ANALYSIS

WHAT ARE THE OPTIONS AVAILABLE TO RESOLVE THE ISSUES? WHY (WHAT REASONS) FAVOR ONE OPTION AS OPPOSED TO ANOTHER? WHAT CONSTITUTIONAL LAW, IF ANY, IS APPLICABLE? WHAT STATUTORY LAW, IF ANY, IS APPLICABLE? WHAT REGULATORY LAW, IF ANY, IS APPLICABLE? WHAT CASE LAW, IF ANY, IS APPLICABLE?

4. COUNTER-ANALYSIS

WHAT WOULD "THE OTHER SIDE" SAY ABOUT YOUR OPTIONS? WHAT IS THEIR POSITION, OR WHAT DO YOU EXPECT IT TO BE? HOW WOULD YOU RESPOND TO THEIR OBJECTIONS? IT IS VERY IMPORTANT THAT THE MEMORANDUM HAVE A HIGHLY BALANCED TONE AND NOT TRY TO HIT THE READER OVER THE HEAD WITH ONLY ONE SIDE OF THE ARGUMENT. WITH RESPECT TO MOST MEMORANDA, THE WRITER IS TRYING TO HELP SOMEONE ELSE IN THE OFFICE MAKE THE FINAL STRATEGY DECISIONS ON THE CASE. HE CANNOT INTELLIGENTLY DO THIS UNLESS SOMEONE HAS BEEN ABLE TO ANTICIPATE WHAT THE OPPONENTS ARE LIKELY TO SAY AND DO.

5. CONCLUSIONS

WHAT CONCLUSIONS OR RECOMMENDATIONS DOES THE WRITER REACH AFTER BRINGING THE READER THROUGH THE ANALYSIS AND COUNTER-ANALYSIS? IN MANY INSTANCES, THE CONCLUSIONS ARE NOT AS IMPORTANT AS THE ABOVE FOUR STEPS AND FOR THIS REASON THE CONCLUSIONS SHOULD BE KEPT SEPARATE FROM THE REST OF THE MEMORANDUM. TO BE

SURE, THE LAWYER WHO HAS THE RESPONSIBILITY OF MAKING THE FINAL DECISION ON THE CASE WILL BE INTERESTED, AND IN MOST SITUATIONS, ANXIOUS TO STUDY THE CONCLUSIONS. HE MAY NOT ACCEPT THE CONCLUSIONS, HOWEVER, WITHOUT THE FOUR STEPS BEFORE HIM. IN SOME CASES THE FEELING MAY BE THAT IT'S TOO EARLY FOR CONCLUSIONS OR RECOMMENDATIONS AND THAT WHAT IS NEEDED IS A FIRST RATE JOB OF SORTING OUT FACTS AND ISSUES AND OF ANALYZING THE LAW THAT MAY GOVERN THOSE FACTS AND ISSUES.

6. UNKNOWNS

RARELY, IF EVER, CAN A MEMORANDUM CLAIM TO HAVE EXHAUSTED EVERY OPTION AND RESOLVED EVERY CONCEIVABLE DOUBT AS TO WHAT THE LAW IS IN A GIVEN CASE. OUR LEGAL SYSTEM SIMPLY DOES NOT LEND ITSELF TO SUCH CERTAINTY. IT IS PERFECTLY PROPER FOR THE WRITER TO STATE THAT HE IS SHAKEY ABOUT SOME OF HIS INSIGHTS AND CONCLUSIONS; AS TO SOME ISSUES HE CAN CONCLUDE: "I'M NOT SURE YET." SUPPOSE THE WRITER IS ASKED TO TAKE A GIVEN SET OF FACTS AND PREPARE A PRELIMINARY DRAFT OF A WILL. IN MOST SUCH CASES, HE WILL COME ACROSS PROBLEMS OF DRAFTSMANSHIP. SOMETHING MAY BE SAID TWO OR THREE DIFFERENT WAYS, ALL OF WHICH CAN BE POSED AS OPTIONS. THE WRITER CAN STATE THAT HE IS NOT SURE WHICH WOULD BE MOST APPROPRIATE, STATE THE PROS AND CONS OF EACH OPTION AND CONCLUDE WITH HIS OWN ASSESSMENT OF WHICH ONE SHOULD BE USED AND WHY. A DOCUMENT SO WRITTEN CAN BE HIGHLY EFFECTIVE. TO BE SURE, THE WRITER DOES NOT CREATE UNKNOWNS WHEN THEY REALLY DON'T EXIST; OPTIONS FOR THE SAKE OF OPTIONS ARE OBVIOUSLY EMPTY. THE STANDARD IS REASONABLENESS; WHATEVER IS REASONABLY FELT TO BE UNKNOW IS STATED AS SUCH. IF AFTER FURTHER THINKING AND RESEARCH, IT IS STILL AN UNKNOWN, IT IS STATED AS SUCH. THIS IS ACCEPTABLE SO LONG AS IT IS CLEAR TO THE READER THAT THE WRITER HAS WRESTLED WITH THE ISSUE AND HAS TRIED THINGS OUT. AT THE VERY LEAST, THE WRITER SHOULD SPECIFICALLY STATE WHAT THE DIFFICULTY IS (E.G., CAN'T FIND ANY ANOLOGOUS CASE LAW, DON'T HAVE ENOUGH FACTS OF THE CLIENT'S CASE TO BE ABLE TO DETERMINE WHETHER OPTION "A" IS PREFERABLE TO OPTION "B"), AND STATE WHAT STEPS WERE TAKEN TO RESOLVE THE DIFFICULTY HOWEVER UNFRUITFUL THE STEPS MAY HAVE BEEN. IT IS HELPFUL TO LIST THESE STEPS SO THAT IF SOMEONE ELSE IN THE OFFICE BEGINS WORKING ON THE SAME CASE, HE WILL BE ABLE TO SEE WHERE YOU HAVE GONE, WHAT STUMBLING BLOCKS YOU FACED AND WHAT YOU DID TO TRY TO OVERCOME THEM.

7. NEXT STEP

HAVING CLEARLY SPECIFIED TO THE READER WHAT UNKNOWNS AND UNCERTAINTIES YOU HAVE, AS OF THE DATE WHEN THE DRAFT OF THE MEMORANDUM WAS SUBMITTED, THERE SHOULD BE SOME INDICATION TO THE READER OF WHAT YOU PROPOSE TO DO IN THE FUTURE TO TRY TO MAKE THE UNKNOWNS LESS UNKNOWN, TO TRY TO BE MORE CONCRETE IN THE AREAS WHERE YOU HAVE BEEN HAVING DIFFICULTY. AT THIS POINT, THERE IS A HIGH PREMIUM ON HUSTLE, IMAGINATION AND AN ABILITY TO FIND OUT AND TO TRACT DOWN LEADS. THE WRITER MAY TALK TO SOMEONE ABOUT THE

DIFFICULTY OR HAVE SOMEONE READ THE DRAFT OF HIS MEMORANDUM IN ORDER TO GAIN A DIFFERENT PERSPECTIVE. HE MAY SIMPLY KEEP HIS NOSE GLUED TO THE BOOKS OF THE LAW LIBRARY UNTIL HE COMES UP WITH SOMETHING ON POINT. HE MAY "GO OUT ON A LIMB" AND TRY AN APPROACH THAT IS SEEMINGLY NOT ON TARGET. IN SHORT, HE STAYS WITH THE DIFFICULTY AND LETS THE READER KNOW, GENERALLY OR SPECIFICALLY, HOW HE PROPOSES TO DO SO.

PROBLEM (7)

[NOTE: FOR PROBLEM 7, YOU WILL BE ASKED TO DRAFT A SEVEN PART MEMORANDUM. UNLESS YOU ARE ENGAGED IN LEGAL RESEARCH, HOWEVER, YOU WILL OBVIOUSLY NOT BE ABLE TO COMPLETE ALL SEVEN PARTS. DO AS MUCH OF THE MEMORANDUM AS YOU CAN NOW AND COME BACK TO THE PROBLEM LATER ON WHEN YOU HAVE MORE TIME TO AN EXHAUSTIVE JOB OF WRITING AND ANALYSIS. THE SUGGESTED RESPONSE THAT FOLLOWS THIS PROBLEM WILL NOT BE EXHAUSTIVE. IT WILL ATTEMPT TO DEAL WITH STRUCTURAL OPTIONS IN SETTING UP THE MEMORANDUM AND WILL SUGGEST DIRECTIONS THAT AN EXHAUSTIVE TREATMENT MIGHT ENTAIL.]

DRAFT A MEMORANDUM ON THE FOLLOWING FACTS PRESENTED TO YOU AFTER AN INITIAL INTERVIEW AND ASSIGNED TO YOU FOR FURTHER WORK:

> SMITH HAS BEEN ARRESTED FOR POSSESSION OF HEROIN. THE LAW OFFICE HAS BEEN ASSIGNED BY THE COURT TO REPRESENT HIM. SMITH IS 24 YEARS OLD AND HAS A LONG HISTORY OF JUVENILE DELINQUENCY, ALTHOUGH HE HAS NEVER BEEN CONVICTED OF A CRIME SINCE HE BECAME 21. SINCE HE WAS 21, HOWEVER, HE HAS BEEN ARRESTED ON VARIOUS DRUG CHARGES. EACH TIME HE WAS EITHER FOUND NOT GUILTY OR THE DISTRICT ATTORNEY DECIDED NOT TO PROSECUTE. THE CURRENT ARREST TOOK PLACE ON JANUARY 7, 1974. THE ARREST WAS MADE BY AN UNDERCOVER POLICE OFFICER (JONES) WHO HAD INFILTRATED THE SEVEN SEAS CLUB OF WHICH SMITH IS A MEMBER. SEVEN SEAS HAS BEEN INVOLVED WITH THE LAW IN THE PAST, E.G., GANG FIGHTS, COMPLAINTS FROM THE NEIGHBORS OF LATE NIGHT DRINKING PARTIES. SMITH SAYS THAT JONES ASKED SMITH IF HE KNEW WHERE HE COULD GET SOME "STUFF" AND OFFERED HIM A LOT OF MONEY TO HELP HIM GET IT. ACCORDING TO SMITH, JONES MADE THE SAME SOLICITATION OF OTHERS IN THE CLUB. ON JANUARY 7TH, ANOTHER CLUB MEMBER ASKED SMITH TO GIVE JONES A PACKAGE. SMITH SAYS HE DID NOT KNOW WHAT WAS IN IT. WHEN SMITH TURNED IT OVER TO JONES, HE WAS ARRESTED ON THE SPOT AND CHARGED WITH POSSESSION OF HEROIN.

SUGGESTED RESPONSE (7)

FACTS

There are at least four clusters or units of facts in this case that raise their own issues. The memorandum should treat each unit separately. For purposes of analysis in this SUGGESTED RESPONSE, the general facts applicable to all the units will first be stated and then the several units of facts will be stated and treated individually (I, II, III, IV) throughout the remaining six steps of the memorandum. Note, however, that an actual memorandum could be organized in many different ways (See Chapter Twenty-Three supra).

General Facts Applicable to all Units:

On 1/7/74, Smith was arrested for possession of heroin by Officer Jones. Smith claims that he is innocent.

Unit I: Facts

Jones was an undercover agent. Smith did not know that he was a policeman. According to Smith, Jones asked him if he knew where he could get some "stuff" and offered him a lot of money to help him get it. Smith also believes that Jones made the offer to other members of the Seven Seas Club. Smith was arrested when he handed over to Jones a package given to him by another club member. Smith says that he did not know that the package contained heroin as charged by the police.

Unit I: Issues

These facts present issues of proof and issues of law. The issues of proof are as follows:

(1) What evidence exists that Jones asked Smith to get him some drugs?
(2) What evidence exists that Jones asked other club members to get him some drugs?
(3) If Smith gave Jones a package of heroin, what evidence exists on why he did so?

The issues of law are as follows (Note that some of these issues assume that the issues of proof will be resolved in a certain way).

(4) Did Jones act improperly in soliciting drugs in this way?
(5) If Jones' conduct was improper, is it a defense to the criminal charge against Smith?

Unit I: Analysis

Here the memorandum must explain in greater depth what is meant by the issues (if further clarification is needed) and why

the writer feels that they are issues. Then each issue is researched and analyzed. What statutory law applies? Are there any cases on point that are analogous etc.? In summary form, the analysis of the five issues in Unit I might proceed thusly:

1. Smith may want to claim that Jones asked Smith to get him some drugs. We don't know yet whether Jones will deny this. If he does deny it, how can Smith support his claim in court? Should Smith take the stand in his own defense and give his own testimony on this point? This raises the serious strategic question of whether Smith wants to testify at all. The state must prove its case against Smith without his taking the stand, unless Smith does so voluntarily. The problems of his taking the stand may outweigh the benefit of his giving direct testimony. Will any other member of the Seven Seas Club be willing and able to claim in court that Jones made this offer to Smith? Some investigative work will be necessary to determine if other witnesses exist.

2. The same problems of proof may exist if Jones denied that he ever asked any club member to get him drugs. Can Smith testify that Jones made the offer to other? If so, would Smith be doing so because he heard Jones do this or because others told Smith about it? If the latter, would the testimony be inadmissible hearsay? Are other club members available to testify?

3. Assuming that Smith gave Jones a package of heroin, why did he do so? Will Jones claim that he did so because Smith wanted to sell the stuff to Jones? Will Jones claim that he did so because Smith responded to Jones' offer to pay for some if Smith could get it? (In discussing issue "5" immediately below, it will become clear why the latter question is relevant. For now the problem is: What proof exists on the reason Smith gave Jones a package of heroin?)

4. The first issue of law is whether Jones acted improperly in soliciting drugs from Smith and others. From the writer's research into criminal and constitutional law, he discovers that in some instances it is improper for the police to entice a citizen into the commission of a crime (called entrapment). Are there any cases that directly or analogously cover what Jones did? What do they say?

5. Closely related to the above issue is the following issue: even if Jones acted improperly, can Smith claim it as a defense? Jones may have solicited Smith to do something illegal. But did Smith give in to this solicitation? Smith claims that he innocently handed Jones a package. Under this version of the facts, Jones did not entice Smith to commit a crime. Hence, is Jones' prior enticement a defense? What does the case law say? Suppose that Jones did entice the other club member to commit a crime and the crime was committed when the drugs were obtained. Jones entrapped this other person and if this other person were

under indictment, he might be able to claim the defense of entrapment. But it is Smith that is before the court. Can Smith raise the defense that the other person has? Can he argue that the events are so intertwined that the defense available to the other person is also available to him? What does the case law say, if anything, on this? What argument could Smith make to take advantage of the possible defense?

Unit I: Counter-analysis

As to each of the issues discussed in the analysis, the writer must try to anticipate what the position of Jones will be. Take the central issue of whether the defense is available to Smith, (5), and whether Jones acted improperly at all (4), for example. The writer can assume that Jones will answer no to both issues. Here the writer attempts to define, what arguments Jones will use to support his position. If papers have already been filed in court on the case, then there may be some indication of what Jones is claiming. The writer must spell these arguments out. He must also, in his research, determine what statutes, cases, etc. would support these arguments or might support them. This research must be stated in the memorandum. Then a counter-counter-analysis must be presented: how would Smith argue that the positions of Jones would not be valid?

Unit I: Conclusions

From the above analysis and counter-analysis, the writer concludes with his assessment of what the "answers" are. What is his personal opinion on how a court would decide the issues? Which of the arguments in the analysis and counter-analysis does he think would hold water?

Unit I: Unknowns

The writer must frankly state what conclusions he is unsure of. What is still a question mark? What is frustrating the writer about the case?

Unit I: Next Step

What's to be done about the frustration? What further research does the writer propose? Where does he think he might get some leads? These should all be clearly and briefly spelled out.

Unit II: Facts

Jones says that Smith handed him a package of heroin.

Unit II: ***Issues***

(1) What evidence exists that the package contained heroin?
(2) What evidence exists that the package Smith gave Jones is the package that Jones will produce in court?

Unit II: ***Analysis***

All we have is Jones' statement that it was heroin and that the package to be introduced in court is the one Smith gave him. Jones must prove that this is true. Should Jones ask for an independent laboratory test of whether substance in the package contained heroin? Does the quantity of heroin make any difference? Does the governing statute give different penalties for different quantities of heroin that a person possesses?

Unit II: ***Counter-analysis***

What will Jones say counter to any of the positions taken on the issues discussed in the above analysis? What support might Jones have?

Unit II: ***Conclusions***

What is the writer's personal assessment on these issues?

Unit II: ***Unknowns***

Remaining uncertainties, if any, are stated here.

Unit II: ***Next Step***

What specific steps will be taken to address any of the unknowns?

Unit III: ***Facts***

Smith claims that when he delivered the package to Jones, he did not know what was in it.

Unit III: Issues

(1) What evidence exists to support Smith's claim that he didn't know what was in the package?
(2) Who has the burden of proof of demonstrating that Smith knew what was in it?
(3) If Smith was ignorant, was this a defense?

Unit III: Analysis

(1) On the first issue of fact, will Smith have to take the stand to give testimony that he was ignorant? As a matter of strategy is it wise to permit him to testify? Is he a believable witness? Has Smith ever handed over packages to people before when he didn't know what was in them, e.g., in the Seven Seas Club, does Smith ever handle incoming mail which he distributed to appropriate members? If so, would this tend to establish that it would not be unusual for him to deliver packages that he doesn't know anything about? If so, how could all this be proved in court? In the best of all worlds, the person who gave Smith the package to give to Jones would testify that he didn't tell Smith what was in it. This other person, however, has probably vanished and even if available would probably want to deny any involvement with the package.

(2) Does Jones have to prove that Smith had actual knowledge or does Smith have to prove that he had no knowledge? Who has the burden of proof? What does the statute and case law say?

(3) Even if Smith was ignorant would it make any difference? Does the statute say that one can be convicted for mere possession or does it have to be a knowing possession? If the statute is not clear, what does case law say?

Unit III: Counter-analysis

What would Jones' rebuttal be to the above points? What law supports him? How is his position to be attacked?

Unit III: Conclusions

See Conclusions in Unit I and II above for the format here.

Unit III: Unknowns

See Unknowns in Unit I and II above for the format used here.

Unit III: Next Step

See Next Step in Unit I and II above for the format used here.

Unit IV: Facts

Smith is 24 years old. He has had juvenile delinquency problems before turning 21, but since that time has never been convicted of a crime.

Unit IV: Issues

(1) Does evidence exist that Smith is not a hardened criminal, and that, generally speaking he tries to lead a law-abiding life?
(2) Can Smith receive a low bail or be released on his own recognizance pending trial?
(3) If convicted, can it be argued that he should be given probation or a very minimal prison term?

Unit IV: Analysis

(1) (2) (3) It is always to the benefit of the accused to be able to portray himself as a basically good citizen who either because of passion or unusual circumstances has gotten into trouble. This is so for a number of reasons. First, it may make him more creditable as a witness if he takes the stand. It may help on the bail issue since a person who has been leading a relatively stable life probably does not need to be kept in jail pending trial or be forced to raise high bail in order to insure that he will appear in court on the trial dates. Finally, on sentencing, the punishment is usually given to fit the person as much as the crime. A first offender, for example, who has a job and family is likely to get a less severe sentence than someone with a long record who has no community ties, even though they both have been convicted of the same crime. Hence, the question arises as to what stability exists in Smith's life. What factors indicate that he should be viewed as a relatively good citizen? How will these factors be brought out in court? What evidence will be used?

Unit IV: Counter-analysis

As the state prosecutor looks at Smith's life history, is he likely to get a different reading? What parts of Smith's life will he probably point to as indications of shiftlessness or criminality? How are these arguments to be answered? Will Smith say that the prosecutor has misinterpreted the facts of his life, or that there are falsehoods involved in his interpretations? Will Smith say that the prosecutor is just looking at the bad side and is giving no proper emphasis to what has been positive in his life? All of these possibilities must be spelled out.

Unit IV: Conclusions

See Conclusions in Units I, II, and III above for the format.

Unit IV: Unknowns

See Unknowns in Units I, II and III for the format.

Unit IV: Next Step

See Next Step in Units I, II and III above for the format.

CHAPTER TWENTY-FIVE

AMBIGUITY IN THE HANDS OF AN EFFECTIVE ADVOCATE

NOT ONLY IS IT TRUE THAT THE WRITER MUST BE ABLE TO SPOT AMBIGUITY WHEN READING STATUTES, CASES, REGULATIONS OR CONSTITUTIONS, (SEE CHAPTER SIX SUPRA), BUT ALSO HE MUST BE ABLE "TO WRITE AMBIGUOUSLY." OF COURSE, WHAT IS REFERRED TO HERE IS NOT SLOPPY WRITING; UNCONSCIOUS OR CARELESS AMBIGUITY HAS NO PLACE IN LEGAL DRAFTSMANSHIP, OR SHOULD HAVE NONE. CONSCIOUS AMBIGUITY IN WRITING IS THE MANIPULATION OF WORDS TO THE END THAT THE READER IS "STEERED" IN THE DIRECTION OF A PARTICULAR MEANING TO WHICH HE MIGHT NOT OTHERWISE BE INCLINED. THE WRITER IN SUCH INSTANCES HAS DECIDED NOT TO BEND OVER BACKWARDS TO REVEAL EVERYTHING HE KNOWS. HE HAS DECIDED TO STRUCTURE THE WRITING IN THE LIGHT MOST FAVORABLE TO THE CLIENT. LYING, ON THE OTHER HAND, IS TO BE AVOIDED AT ALL TIMES. ALSO, IF THE WRITER HAS BEEN INSTRUCTED TO BE FULLY COOPERATIVE IN HIS WRITING, HE MUST BE SO. THE POINT IS THAT ANY WRITING THAT GOES OUTSIDE THE OFFICE IS QUITE DIFFERENT FROM INTER-OFFICE MEMORANDA; THE FORMER IS USUALLY GUARDED WHILE THE LATTER IS FULLY OPEN. A CENTRAL TOOL IN THE HANDS OF THE EFFECTIVE ADVOCATE IS THE ABILITY TO PHRASE LANGUAGE TO THE ADVANTAGE OF THE CLIENT. THIS IS WHAT IS MEANT BY AMBIGUOUS WRITING IN THE BEST SENSE OF THE TERM.

IN SUMMARY, THE FOLLOWING TESTS ARE TO BE EMPLOYED IN DETERMINING WHEN AMBIGUITY IN WRITING IS IMPROPER:

(1) IT'S UNINTENTIONAL;
(2) IT'S A LIE;
(3) IT'S SO CUTE OR EVASIVE AS TO INCITE THE READER TO HOSTILITY;
(4) IT'S SO UNCLEAR, THAT IT'S ALMOST IMPOSSIBLE TO DERIVE ANY MEANING OUT OF IT;
(5) IT'S IN VIOLATION OF A DIRECTIVE FROM THE SUPERVISOR TO BE ABSOLUTELY CANDID;
(6) IT'S NOT NECESSARY.

ADMITEDLY, "AMBIGUOUS WRITING" IN THE SENSE MEANT HERE IS EVASIVE WRITING. THIS IS NOT NECESSARILY TO BE FROWNED UPON SO LONG AS NO ONE OF THE ABOVE SIX TESTS ARE MET.

THE MORE COMMON TECHNIQUES OF AMBIGUOUS WRITING THAT CAN BE EFFECTIVE ARE AS FOLLOWS:

(A) ONLY THE ABSOLUTE MINIMUM IS SAID.
(B) VAGUE TERMS ARE PREFERRED OVER SPECIFIC ONES.
(C) SENTENCE STRUCTURE IS CALCULATED TO PLACE THE EMPHASIS WHERE EMPHASIS IS SOUGHT.

(D) WHEN A THOUGHT CAN BE EXPRESSED IN MORE THAN ONE WAY, THE WAY MOST FAVORABLE TO THE CLIENT IS SELECTED.

PROBLEM (8)

MR. SMITH IS PLAINTIFF IN AN AUTOMOBILE ACCIDENT. HE IS SUING MR. JONES FOR THE DAMAGE TO HIS CAR. JONES SENDS SMITH WRITTEN INTERROGATORIES AND ONE OF THE QUESTIONS IS "AT WHAT SPEED WERE YOU DRIVING AT THE TIME OF THE ALLEGED ACCIDENT?" WRITE AN ANSWER TO THIS QUESTION THAT IS AMBIGUOUS.

SUGGESTED RESPONSE (8)

"I was driving at a speed that was appropriate for the conditions of the road."

PROBLEM (9)

SMITH'S LANDLORD HAS WRITTEN HIM A LETTER INFORMING HIM THAT NEIGHBORS HAVE BEEN COMPLAINING ABOUT NOISY PARTIES AT SMITH'S APARTMENT. THE LANDLORD SENDS HIM A LETTER WANTING TO KNOW IF IT IS TRUE. IN FACT, SMITH DOES ENTERTAIN ABOUT ONCE EVERY TWO WEEKS AND WANTS TO CONTINUE DOING SO. HOW COULD SMITH ANSWER THE LANDLORD'S LETTER?

SUGGESTED ANSWER (9)

"Whenever I have a few friends over, I have taken steps to see that no undue noise is created, and I want to assure you now that I have every intention to continue taking these steps."

PROBLEM (10)

THINK OF OTHER WAYS TO SAY "SMITH WAS DRUNK."

SUGGESTED RESPONSE (10)

"Smith wasn't feeling well."

"So many things were happening that Smith does not recall every detail. It was not his best day."

PROBLEM (11)

SMITH HAS NOT PAID HIS RENT. HE HAS LOST HIS JOB AND IS BEING HOUNDED BY CREDITORS. HE IS UNDER A COURT ORDER TO PAY HIS WIFE ALIMONY. HE HAS MISSED THREE PAYMENTS, BUT HE WANTS TO MEET THIS OBLIGATION. HIS WIFE'S ATTORNEY WRITES HIM A LETTER DEMANDING AN EXPLANATION AND THREATENING TO BRING HIM TO COURT. DRAFT AN ANSWER TO THIS LETTER FOR SMITH.

SUGGESTED RESPONSE (11)

"Thank you for bringing this payment delinquency to my attention. I am currently in the process of changing jobs. I expect to have my affairs back in order shortly and I will be in touch with you very soon."

PROBLEM (12)

THE BY-LAWS OF AN EDUCATIONAL ORGANIZATION FORBID IT TO CONDUCT ANY "CONFERENCES OR CONVENTIONS" ON POLITICAL TOPICS. ON JANUARY 10, 1974, THE ORGANIZATION IS SPONSORING A TWO DAY EVENT INVOLVING ABOUT FIFTY PEOPLE. THE DIRECTOR OF THE ORGANIZATION KNOWS THAT A NUMBER OF THE PEOPLE WHO ARE GOING TO COME ARE VERY POLITICALLY ORIENTED AND WILL TAKE EVERY OPPORTUNITY TO TURN EVERY ISSUE INTO A POLITICAL ISSUE. THE DIRECTOR WANTS THE EVENT TO TAKE PLACE AS SCHEDULED. THE CHAIRMAN OF THE BOARD OF DIRECTORS OF THE ORGANIZATION HEARS ABOUT THIS. HE WRITES HIM A LETTER SEEKING INFORMATION AND SPECIFICALLY REMINDS THE DIRECTOR OF THE BY-LAWS. DRAFT A RESPONSE.

SUGGESTED RESPONSE (12)

"On January 10th a number of people have been invited to a meeting to consult with us on the direction of our organization. It is my express policy and that of my staff that our organization in no way encourage the participants at the meeting to turn it into a political affair."

APPENDIX A

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